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ABSTRACT

The purpose of this study is to analyze the reasons behind governmental decisions leading to the "English-only" instruction policy in the public schools and the recent softening of this policy by various state and local governments. The author's thesis is that such policies have considered neither the advantages which the child may have if he learns in his native tongue nor the willingness of the non-English speaking groups to learn English. He finds, rather, that official acceptance or rejection of bilingualism in American schools has depended on whether the group involved has been considered politically and socially acceptable, and that the decisions to impose English as the sole language of instruction have reflected the popular attitudes towards that particular ethnic group and the degree of hostility evidenced toward that group's natural development. The author analyzes the experience of five groups: German-Americans, Mexican-Americans, Japanese-Americans, American Indians, and Puerto Ricans in Puerto Rico. He shows the different behavior manifested by the government at various times towards these groups and how the requirement that English be the exclusive school language was imposed or withdrawn as government policy changed. Finally he examines the Bilingual Education Act and what it suggests as a government policy for the future. (FWB)

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EDUCATIONAL POLICY AND POLITICAL ACCEPTANCE:
The imposition of English as the language of instruction in American schools

by ARNOLD H. LEIBOWITZ

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EDUCATIONAL POLICY AND POLITICAL ACCEPTANCE

The Imposition of English as the Language of Instruction in American Schools

BY

ARNOLD H. LEIBOWITZ*

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INTRODUCTION

> "...language gives a people 'its sense of unity and brings in its train a whole complex of elements that go into the making of a peoplehood.' Furthermore, 'it brings into play the remembrance of past heroes and events of history, the customs, laws which regulate conflicts of interest and help to maintain the peace, and folkways which include characteristic forms of esthetic self-expression. Besides enabling a people to carry on social intercourse, a common language is thus a vehicle for factors which give context and meaning to that social intercourse.'" 1/

As the above quotation indicates, language is more than a means of communication. Some linguists have indicated that it determines our thought patterns. But we do not need to go as far as this to realize that to a people, language brings into play an entire range of experience and an attitude toward life which can be either immensely satisfying and comforting or, if imposed from without, threatening and forbidding. From a central government's standpoint, a common language forges a similarity of attitude and values which can have important unifying aspects, while different languages tend to divide and make direction from the center more difficult. Every Federal government--and the United States is no exception--has been concerned with balancing the role that a non-national mother tongue plays for its citizenry: on the other hand the annealing, productive, and harmonizing effect resulting from the

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1/ Excerpt from speech delivered by Antonia Pantoja. Puerto Rican Forum, Inc., 1964 Study of Poverty Conditions in the New York Puerto Rican Community 78-79 (1965). Quoting from M. Kaplan, The Future of the American Jew 146 (1948).

comfort obtained in the course of its use by members somewhat alien to the culture of the dominant society, and on the other the divisive potential brought on by its retention and strengthening.

But if minority language usage can breed problems, its suppression by public authority leads to bitterness and estrangement to the very government which is trying to create loyalty and devotion in this alien section of the population. Superimposed upon this long-range policy question are a myriad of short-range economic and social interests which affect local attitudes toward the group and its most obvious symbol of its apartness: its language. Public officials in attempting to balance these varying interests and emotions have been caught in a series of painful decisions as they have directed and redirected policies with respect to the enforcement of English in various aspects of American life.

The difficulties have been most clearly seen in the school system, where the question of the use of English as the language of instruction to the exclusion of other languages has been a constant issue. Around this issue long-range and short-term visions and attitudes clashed most sharply and resulted in a lengthy travail for politicians, administrators, and educators--however well-meaning--as well as for the parents and children who spoke a different mother tongue than English.

At the present time thirty-five states require that the language of instruction in the school system be English. These requirements developed over a period of years, most of them arising during the period of World War I and immediately after, when, in a combined fit of patriotism and xenophobia, some 19 states enacted this kind of legislation. Recently the policy has softened. A number of states pointedly disregard the enforcement of these statutes or have repealed them. Similarly, the Executive Branch, which for over a century in governing its territories and Indian reservations had insisted on exclusive use of English by the inhabitants, in the last 25 years has permitted, and even encouraged, schools to teach in the native tongue. And, just a few years ago, in a complete reversal of policy, Congress passed the Bilingual Education Act of 1967, indicating the propriety of instruction in a language other than English and authorizing funds to encourage this.

The purpose of this essay is to analyze the reasons behind the governmental decision leading to the "English-only" instruction policy and now to its reversal. The thesis that will be presented here is that this issue had little to do with the ability of non-English-speaking children to learn more readily in their native tongue, although there was, and continues to be, considerable debate over the advantages, from the educational point of view, of teaching in either the native tongue or in English.

Nor does the decision have to do with the willingness of the non-English-speaking group to learn English. In many cases the group either knew English or participated fully in the public school (English-language) system but was merely seeking to preserve its own language and culture in addition to English.

Further analysis of the record indicates that official acceptance or rejection of bilingualism in American schools is dependent upon whether the group involved is considered politically and socially acceptable. The decisions to impose English as the exclusive language of instruction in the schools have reflected the popular attitudes toward the particular ethnic group and the degree of hostility evidenced toward that group's natural development. If the group is in some way (usually because of race, color or religion) viewed as irreconcilably alien to the prevailing concept of American culture, the United States has imposed harsh restrictions on its language practices; if not so viewed, study in the native language has gone largely unquestioned or even encouraged.

As might be expected, language restriction was only one limitation to be imposed. These language restrictions were always coupled with other discriminatory legislation and practices in other fields, including private indignities of various kinds, which made it clear that the issue was a broader one. To the minority group affected, this was very clear and, therefore, it was the act of imposition itself which created the reaction by the minority group rather than the substantive effects of the policy.

In presenting this thesis we shall analyze in brief compass the experience of various migrant and native American groups in the United States: German-Americans, Japanese-Americans, Mexican-Americans, American Indians, and Puerto Rican Americans in Puerto Rico. We shall show the different behavior manifest by the Government at various times toward these groups and how the requirement that English be the exclusive language of instruction in the schools was imposed or withdrawn as government policy changed. We shall then examine the recently passed Bilingual Education Act and what it suggests as a government policy for the future.

GERMAN-AMERICANS

Prior to the last half of the nineteenth century, the German immigrants in the United States aroused little hostility. They had proved themselves to be aggressive patriots as early as the Revolutionary War, being well represented at the Philadelphia conventions of 1774 and 1775 2/ and in the Continental Army. 3/ The Continental Congress even printed German versions of a number of documents, including the Articles of Confederation. 4/

All schools in the United States were financed by private funds at that time. The German schools of the 1700's were sectarian in character; ministers were commonly the teachers. 5/ School instruction throughout Pennsylvania, Maryland, Virginia, and the Carolinas, was given in German, often to the exclusion of English. 6/

2/ 1 A. Faust, The German Element in the United States 291 (1969). (Hereinafter cited as Faust).

3/ Id. at 299.

4/ H. Kloss, The Bilingual Tradition in the United States 51 (1970). (Hereinafter cited as Kloss) The page numbering mentioned in this footnote and subsequent references to this work are to the manuscript version kindly made available by the publisher.

5/ 2 Faust 203.

6/ Ibid.

The number of German immigrants increased greatly during the 1817-1835 period. Unlike the 18th century group, these were refugees from political--not religious--oppression.

Among their activities, these "30ers" worked "to have granted to the German language a high degree of ... status in those states with strong German elements." 7/

Most of the newcomers concentrated in those districts where the land was most readily available and cheap: the Western frontier states of Indiana, Illinois, Ohio, Wisconsin, Minnesota, Michigan, Iowa, and Missouri. In these farming districts, the Germans initially had no teachers at their disposal who were familiar with English and, in any event, there was little need for a command of English during those early settlement years. 8/ Thus, most of the earliest school laws made no mention of the language to be employed in the public schools. 9/ If the language question was raised in these states, the "30ers" brought pressure to bear--successfully--at the polls. The Germans in Ohio, for example, gave much support to the Democrats in the 1836 election. Charging not only that they had paid taxes for public school support

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7/ Kloss 57.

8/ 2 Faust 204.

9/ For example, Missouri in 1817; Illinois in 1825; Michigan in 1835; and Iowa in 1841. Kloss 200.

but also that the Democratic party owed them some recognition, the Germans fought to exercise influence on the course of study in the public schools of the state. They did not want English to be excluded but they asked that German be taught as well. In response to the German demand, the Ohio legislature passed a law by which the German language could be taught in the public schools in those districts where a large German population resided. 10/ In the succeeding election of 1839, pledges were taken from the candidates that the wording of the law would be changed to prevent any loopholes. 11/ Accordingly, the law was revised in 1840--the date of the introduction of German-English public schools in Ohio.

In this initial state of tolerance, Pennsylvania a few years earlier had gone even further than Ohio. In 1837 a Pennsylvania law was passed permitting German schools--in some all instruction was to be given in German--to be founded on an equal basis with English ones. This was the only state where such language equality in the public school system was asked for or obtained. 12/

At the local level, accommodations were also made to the native German school populace. For example, in one district in Wisconsin one-third of the textbook funds were specified to be spent for German textbooks; in others school boards could hire only German-speaking teachers; and frequently local

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10/ 2 Faust 151.

11/ *Ibid*.

12/ *Id*. at 152.

school-district records were kept in German. 13/ In Wisconsin it became the norm that whenever a newly created school district contained a large German population, teachers were hired and the schools were conducted either exclusively in German or in both German and English. 14/

In addition to having German taught locally, the immigrants fought successfully to create a legal framework to prevent state authorities from interfering with such teaching. In most instances, the legal provisions were applicable to all languages; it was, however, the German community who initiated these statutes and who benefitted the most from them. 15/

It should be noted that the Germans were practically the sole immigrants of any significant number during the first half of the nineteenth century. Because they settled in the relatively unpopulated frontier areas of the country and were concentrated in these areas, their presence was relatively unnoticed. They were in the majority in the regions they inhabited; their English-speaking counterparts were the minority population, giving the German element a political and social advantage not available to other groups at that time.

13/ L. Jorgenson, The Founding of Public Education in Wisconsin 146 (1956).

14/ J. Fishman, Language Loyalty in the United States 234 (1966).

15/ Id. at 235. E.g., Missouri and the Territory of Dakota; and between 1854 and 1869 in Indiana, Wisconsin, Iowa, Illinois, Minnesota, and Kansas.

Another explanation for the liberalism that prevailed involves again the intense patriotism demonstrated by the Germans during the several United States conflicts of the period. Beginning with the War of 1812 and ending with the Spanish War, the Germans were represented by large numbers in the American armies. 16/

The latter half of the 19th Century saw the rise of increasingly violent anti-Catholic feeling in the United States. The Know-Nothing Party captured the Massachusetts and Maryland state legislatures and was highly influential in Connecticut. English literacy tests, passed in Connecticut (1855) and Massachusetts (1857), were designed to disenfranchise the newly arrived Irish-Catholics. 17/

The Civil War broke up the politically powerful Know-Nothing movement before it had had any severe impact on the Germans, of whom a sizeable number were Catholic. However, after the War the forces of nativism banded together again and, led by the American Protective Association (APA), ended the period of leniency for the German community.

The teaching of German in the public schools came under severe attack in the 1880's, and the use of German was discontinued in St. Louis, Louisville, St. Paul, and San Francisco. 18/

16/ 1 Faust 512, 524, 529.

17/ Leibowitz, "English Literacy: Legal Sanction for Discrimination," 45 Notre Dame Lawyer 35 (1969).

18/ Kloss 156.

Restriction of non-English language instruction was not rationalized on technical and educational grounds: rather, legislation was based on a number of politican and economic considerations which, when combined, made the recent immigrants a formidable threat.

Immigration reached an all-time high in the 1880's and, since declarant aliens were permitted to vote, the new immigrants threatened to change the political balance in many states. 19/ Most of the newcomers were Catholic. Thus, religious bigotry was added to xenophobia and to the economic threat caused by their cheap labor flooding the market. 20/ The APA moved against aliens on two fronts: their language and their church. 21/

The remedy developed by the Germans was the use of the private and parochial schools for instruction in the mother-tongue, 22/ since the restrictive school laws at that time made little, if any, mention of schools other than public schools. The practice became so widespread that, in largely German districts, "the parochial schools in connection with the Roman Catholic and the Lutheran churches had, to a very considerable degree, displaced public schools." 23/

19/ Leibowitz, supra note 17, at 35.

20/ N. McCluskey, Catholic Education in America 15 (1964).

21/ Kloss 157.

22/ J. Hawgood, The Tragedy of German-America 39 (1940).

23/ Bascom, "The Bennett Law," 1 Educational Review 48 (1891).

It was a remedy that was viewed by opponents as a direct insult, "contrary to the spirit, genius, and institutions of the United States" 24/ and as a potential menace to American institutions. Thus, in 1889, legislation was proposed in a number of states attempting to prescribe the use of English in private and parochial schools. 25/

The Germans were strongly opposed to the laws not only on the school language grounds but also because these laws represented an attack on their religion, culture, and personal liberty:

> They (the Germans) were convinced that (the laws) arose from hatred to foreigners, that it was sinister in its purposes; in short, that it was intended as a blow against all they held most dear. They, on their part, protested that they had no hostility to the public schools nor to the English language...Germans understood that the law was aimed at the destruction of all religion. A panic fear seized upon the minds of the lovers of the German language and customs... 26/

Legislation against Catholics was being passed at this time and gave further justification to the fears expressed above by the German Catholics. New state constitutions included prohibition against sectarian instruction (e.g., Nebraska in 1875, Colorado in 1876, Idaho, Washington, and Wyoming in 1889); numerous states enacted legislation barring all sectarian books not only from the classroom but from school libraries (e.g., Kansas in 1876, Oklahoma in 1890, Idaho in

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24/ D. Reilly, The School Controversy (1891-1893) 57 (1943).

25/ Kloss 153. E.g., New York, Ohio, Illinois, Wisconsin, Nebraska, Kansas, and in 1890 the newly established states of North and South Dakota.

26/ Kellogg, "The Bennett Law in Wisconsin," 2 The Wisconsin Magazine of History 19 (1918).

1893, South Dakota in 1901); prohibitions of state aid to church schools were strengthened by constitutional provisions (e.g., North Carolina and Texas in 1876, Delaware in 1897, Wisconsin in 1898, and in 39 states by 1903). 27/

Perhaps the most heated controversy about the use of English in the private and parochial schools took place in the German-populated states of Illinois and Wisconsin. The Edwards Law in Illinois and the Bennett Law in Wisconsin were passed in 1889. Both Laws required, for the first time, that parochial as well as public schools teach elementary subjects in the English language. The reasoning may be exemplified by an editorial in the Chicago Tribune on March 15, 1890:

> In Illinois and Wisconsin a contest between the supporters and enemies of the American free schools, between the right of Americans to make their own laws and the claim of an Italian priest living in Rome that he has the power to nullify them can have but one termination--the defeat of such arrogance and presumption. 28/

Roger Vail, Vice-President of the Catholic Truth Society, answered that Catholics "have nothing against the demand that reading, writing, arithmetic, and U. S. History be taught in the English language," but they objected to the sections that give local authorities power over the parochial school

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27/ Beale, "A History of Freedom of Teaching in American Schools," in Amer. Hist. Ass'n. Com'n. on Social Studies, Rep. 208-209 (1941).

28/ D. Kucera, Church-State Relationships in Education in Illinois 114 (1955).

system. 29/ The Catholic hierarchy in Wisconsin made a similar statement of protest to the Bennett Law. 30/

The German Lutherans of the states affected were caught in the middle of this anti-Catholic movement, for they had a sizable parochial school system as well. They saw these laws as a violation of the freedom of conscience by forcing children into the public schools or forcing upon them books "permeated by the toxins of atheism and irreligion." 31/

The Missouri Lutheran Synod appointed a General School Committee to direct the opposition to both the Bennett and Edwards Laws. In addition to other responsibilities, the Committee was empowered to solicit contributions and lend financial aid to district synods who could not meet the costs incurred in opposing these laws, publish articles in the secular press, and secure the nomination of candidates who supported their position on the school question. 32/

With the exception of the Lutherans, the majority of Protestant demoninations favored the new school laws. 33/

In the 1890 elections the Democrats, supported by the German Lutherans, the Polish and German Catholics, the Scandinavian

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29/ Reilly, op. cit. supra note 24, at 56.

30/ Kucera, op. cit. supra note 28, at 114.

31/ Id. at 116.

32/ Ibid.

33/ Id. at 117.

Lutherans, and the German Freethinkers, won in Wisconsin and Illinois on anti-Edwards and Bennett platforms. 34/ Both acts were repealed in 1893 and the two states passed compulsory-attendance legislation without any reference to the English language. The attacks of 1889-1891 left their impact, however, on the German schools. For one, the Bennett and Edwards Laws were in operation for a number of years before their repeal, and the schools attempted to adjust to them: "The footing that English gained was not taken back even after the repeal of the...Acts." 35/

The question of German in the parochial schools was revived during the First World War. At the onset of the War, state officials maintained the right of private schools to give instruction in German. One such official declared:

> Private parochial schools have the legal right to conduct schools in the German language...so long as they do not violate the law or interfere with the carrying on of the War. 36/

But as anti-German feelings grew and Germans were considered a serious threat to U. S. security, a movement, led by the National Council of Defense, sought to stamp out the remnants of the German culture still in existence. A decree issued by the Victoria County Council of Defense in Texas read in 1918: "We call upon all Americans to abandon the use of the German language in public and private, as an utmost condemnation of the rule of the sword." 37/ Although it was impossible to

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34/ Kloss 154.

35/ *Id*. at 155.

36/ Kucera, *op. cit. supra* note 28, at 161.

37/ Kloss 111.

stop the use of German in the private sphere, council attempts to suppress its use in public were successful. In Findlay, Ohio, the town council levied a fine of $25 for the use of the German language on the streets. 38/

Given this political climate, restrictive legislation concerning the use of the German language in the schools was inevitable. In 1903, there were but fourteen states with some sort of provision requiring that instruction in the elementary schools should be in English, and seventeen such states in 1913. By 1923, however, thirty-four states required English. 39/

German was specifically mentioned in the laws of several states. But the German provisions in 1903 and 1913 were permissive while those in 1923 were prohibitive. 40/ Ohio provides an excellent example in this regard. In 1903, the provision was as follows:

> The Board of any district shall cause the German language to be taught in any school under its control, during any school year, when a demand therefor is made, in writing, by 75 freeholders resident of the district, representing not less than forty pupils who are entitled to attend such school, and who, in good faith, desire and intend to study the German and English language together; but

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38/ Id. at 112.

39/ J. Flanders, Legislative Control of the Elementary Curriculum 18 (1925).

40/ Some twenty-two state legislatures specifically singled out German and prohibited its instruction. Zeydel, "The Teaching of German in the United States from Colonial Times to the Present," in Modern Language Association, Reports of Surveys and Studies in the Teaching of Modern Languages 361 (Nov. 1961). See also E. Hartmann, The Movement to Americanize the Immigrant 237-53 (1948).

> such demand shall be made at a regular meeting of the board, and prior to the beginning of the school year, and any board may cause German or other languages to be taught in any school under its control without such demand.

In 1913, it was changed to read:

> Boards of Education may provide for the teaching of the German language in the elementary and high schools of the District over which they have control but it shall only be taught in addition and as auxiliary to the English language. All the common branches in the public schools must be taught in the English language. 41/

By 1923 the statute, in appropriate part, read:

> Sec. 7762-1. That all subjects and branches taught in the elementary schools of the State of Ohio below the eighth grade shall be taught in the English language only. The board of education... shall cause to be taught in the elementary schools all the branches named in the...General Code. Provided that the German language shall not be taught below the eighth grade in any of elementary schools of this state. 42/ (Emphasis supplied)

The Ohio statute and similar laws against German language instruction were declared unconstitutional by the Supreme Court. 43/

The leading case in this area, Meyer v. Nebraska, 44/ made clear that the prohibition or undue inhibition of the use or

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41/ Flanders, op. cit. supra note 39, at 29.

42/ 108 Ohio Laws 614 (June 5, 1919).

43/ Bohning v. Ohio and Pohl v. Ohio, 262 U.S. 404 (1923)

44/ 262 U.S. 390 (1923)

teaching of a foreign language is an unconstitutional violation of due process. 45/ However, it also explicitly assumed, in dicta, that a state statutory requirement of English instruction in public and private schools was permitted by the Constitution. 46/

The case arose when, after World War I, Nebraska and a number of other states passed statutes inhibiting the teaching of foreign languages. The Nebraska statute was quite simple:

> Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.
>
> Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade.... 47/

The Court, Mr. Justice McReynolds writing the opinion (as he did for all the language cases arising in the twenties), held the statute unconstitutional:

> It is said the purpose of the legislation was to promote civil development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this State.' It is also affirmed that the foreign born population is very

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45/ Id. at 403.

46/ Id. at 402.

47/ Ch. 249 Laws of Nebraska 1019 (1919).

> large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.
>
> ...The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution--a desirable end cannot be promoted by prohibited means.
>
> . . . .
>
> The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civil matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquillity has been shown.
>
> The power of the State to compel attendance at some schools and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports.... Our concern is with the prohibition approved by the Supreme Court....No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibitions....We are constrained to conclude that the

> statute as applied is arbitrary and without reasonable relation to any end within the competency of the State. 48/ (Emphasis supplied)

Justices Holmes and Sutherland would have upheld the state legislation, although they would have struck down a statute aimed specifically at one foreign language.

> We all agree, I take it, that it is desirable that all the citizens of the United States should speak a common tongue, and therefore that the end aimed at by the statute is a lawful and proper one....I cannot bring my mind to believe that in some circumstances, and circumstances existing it is said in Nebraska, the statute might not be regarded as a reasonable or even necessary method of reaching the desired result.... I agree with the Court as to the special proviso against the German language contained in the statute dealt with in Bohning v. Ohio. 49/

Despite the court rulings, the practical effect of World War I and the accompanying state legislation resulted in the German language effectively being dropped from the high school curriculum. Thus, in 1915 approximately 324,000 students were studying German. By 1922, four years after the World War I ended, the high schools had less than 14,000 students of German. 50/

The road back was slow and World War II made matters doubly difficult. The result was that, although there was an increase

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48/ Meyer v. Nebraska, 262 U.S. 390, 401-3 (1923).

49/ Bartels v. Iowa, 262 U. S. 404, 412 (1923) (dissenting opinion).

50/ Zeydel, supra note 40, at 361.

in the total high school population from 1,300,000 in 1915 to 5,400,000 in 1948, German enrollment dropped in those years from 324,000 (25%) to 43,000 (.8%). 51/

There was a growth in foreign language studies generally in the United States in the '50's and early '60's as a result of expanding post-war international activity and the National Defense Educational Act of 1958. German language study similarly expanded. However, general curricula instruction in German now seems to be a thing of the past. 52/

51/ *Id*. at 368.

52/ *Id*. 378-388.

JAPANESE-AMERICANS

The experience of the Japanese-Americans in the United States provides a poignant example of the use of the English-language instruction requirement as a political act to evidence hostility by the government toward a people.

In 1875 the United States signed a treaty with Hawaii permitting Hawaiian sugar to be admitted into the States in exchange for a naval base at Pearl Harbor. Much of this crop, which was heavily dependent for its growth and harvest on cheap labor, was handled by Chinese immigrants. However, the Chinese immigrated to California in some number, and in 1882, in response to California pressure, the Chinese Exclusion Act, excluding Chinese--"skilled and unskilled and those engaged in mining"--for ten years, was passed by the Federal government. The Hawaiian legislature dominated by American interests passed a similar law in 1888. Faced with the potential of a new crop offering great economic opportunity but with a dearth of laborers, in 1889 the Hawaiian sugar plantation owners arranged with the Japanese government for the first emigration from Japan of laboring classes. The Hawaiian census for 1900, three years after the formal acquisition of Hawaii by the United States, counted 61,111 Japanese in the Islands out of a total population of 154,001, or 39.7 percent of the total. 53/ This made them by far the largest ethnic group in the Hawaiian Islands: almost double

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53/ Y. Ichihashi, Japanese in the United States 27 (1932) the native Hawaiian groups and more than double the Chinese and Portuguese populations. The Caucasian population was less than 10,000. 54/

Annexation of Hawaii to the United States had the effect of freeing thousands of Japanese contract laborers on Hawaii sugar plantations, many of whom came to the States. For example, 2,844 Japanese entered the continental United States in 1899, but in 1900 the number rose to 12,635. From 1900 to 1908--the year the Gentlemen's Agreement limiting immigration to the States from Japan took effect--a total of 139,103 came to the States, 55/ an average of more than 10,000 Japanese a year. In only two later years (1918-1919) was the Japanese immigration again to reach such levels. The number of Japanese in the States never was very large (less than 140,000 in the States at its peak in 1930); and despite the fact that the Japanese were concentrated in certain counties in the western states and especially in California, they never formed a substantial portion of the populace in the county or region in which they resided. 56/

Nevertheless, the sharp jump in the immigration rate at this time and the suggestion of President Theodore Roosevelt in 1906 to permit the naturalization of Japanese aliens made race hatred a politically potent issue. Anti-Japanese agitation in California began to take on great intensity in the first

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54/ Id. at 32.

55/ Compared to 10 million European immigrants in the same period.

56/ Ichihashi, op. cit. supra note 53, at 93.

decade of the 20th Century. There was already a deep prejudice and violent hostility in California against the Chinese which had culminated in the passage of the Chinese Exclusion Act of 1882. Prior to that legislation local acts of violence against the Chinese were frequent,57/ and state and local legislatures passed laws blatantly discriminating against the Chinese. 58/ Thus, an early California statute in 1862 imposed a police tax on Chinese laborers to protect free, white labor from oriental competition; 59/ a California constitutional provision prohibited corporations from employing Chinese; 60/ and San Francisco ordinances required the recommendation of twelve citizens and taxpayers in the block where a laundry was to be maintained in order to secure a license for its operation 61/ and limited laundries without a special permit to brick and stone buildings. 62/ All of these provisions, when tested in court, were held unconstitutional but their effect was to create a climate so hostile that Chinese would not emigrate to California and eventually would be totally excluded.

After the Chinese Exclusion Act similar tactics were directed toward the Japanese. Although they were fewer in number,

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57/ R. Cleland, A History of California, The American Period 48 (1922).

58/ M. Konvitz, The Alien and Asiatic in American Law 171-189 (1946).

59/ Lin Sing v. Washburn, 20 Calif. Reports 534 (Cal. Sup. Ct. 1862).

60/ In re. Tibuicio Parrott, 1 Fed. 481 (Cir. Ct. D, Calif, 1880).

61/ In re. Quong Woo, 13 Fed. 229 (Cir. Ct. D, Calif, 1882).

62/ Yick Wo v. Hopkins, 118 U.S. 356 (1886).

California found the problem more difficult since the Japanese were an aggressive people unafraid of White competition. In addition, they were backed by a government which forcefully supported their interests and did not take actions discriminating against its citizens lightly. But the pattern was the same as that followed against the Chinese: riots on occasion, 63/ segregation, 64/ licensing requirements and unfair treatment 65/ to restrict their employment and advancement. Many laws restricting employment did not mention the Japanese specifically but accomplished the same result by directing their aim to "the alien who was ineligible for citizenship." 66/

The California Democratic Platform of 1908 included an attack on President Roosevelt for his suggestion of possible citizenship for Japanese immigrants, and in 1909 (and again in 1911 and 1913) the California legislature introduced a number of blatently anti-Japanese measures. The major Democratic Party candidates in California, Governor Hiram Johnson, Senator

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63/ Ishihashi, op. cit. supra note 53, at 230-231.

64/ The most notorious act in this regard was the resolution of the San Francisco Board of Education, passed on October 4, 1906, directing oriental children to be sent to a special oriental school. Id. at 236-242.

65/ L. Mears, Resident Orientals on the American Pacific Coast 195-209, 234, 323, 361 (1927).

66/ Takao Ozawa v. U.S., 260 U.S. 178 (1922); Yamashita v. Hinkle, 260 U.S. 199 (1922).

Phelan, and President Woodrow Wilson all used the issue for major political advantage. 67/

The Russo-Japanese War in 1905--the first time in modern history a "white power" had lost to a non-white country--permitted racially motivated politicans to increase fears further. Then, in 1912, the United States recognized the newly established Chinese Republic and tensions increased between the United States and Japan.

In this atmosphere the California legislature passed the Alien Land Law of 1913 68/ preventing the ownership of land by

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67/ Woodrow Wilson, speaking in the state, declared: "The whole question is one of assimilation of diverse races. We cannot make a homogeneous population of a people who do not blend with the Caucasian race." Over one hundred thousand copies of this statement were distributed throughout California by the Democratic Party. C. McWilliams Prejudice: Japanese-Americans, Symbol of Racial Intolerance 19 (1945).

68/ The background of the law is explicated in some detail in R. Daniels, The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion 46-64 (1969). Following its adoption in California, similar laws were passed in Arizona, Idaho, Kansas, Louisiana, Montana, New Mexico and Oregon. Similar prohibitions on aliens who have not declared their intention of becoming citizens were passed in Minnesota, Missouri, Montana and Washington. The latter also effectively precluded Japanese ownership of land. These laws were declared constitutional by the Supreme Court. Terrace v. Thompson 263 U.S. 197 (1923); Webb v. O'Brien 263 U.S. 313 (1923); Frich v. Webb 263 U.S. 326 (1923) Cockrill v. California 268 U.S. 258 (1924). Konvitz, op. cit. supra note 58, at 157-170.

"aliens ineligible for citizenship." The bill was aimed not only at preventing further Japanese expansion in agriculture but also at driving the Japanese from the state. The Act, which was later strengthened in 1920 and 1923, led to the Immigration Act of 1924 which would, under the formulas utilized there, have limited the Japanese to a nominal immigration quota (126 persons a year). Nevertheless, Senator Samuel Shortridge from California introduced an amendment, which passed, to exclude "all aliens ineligible for citizenship," thus totally banning Japanese immigration. But the agitation and discrimination did not stop but continued until World War II brought evacuation and internment of both Japanese aliens and citizens. 69/

In Hawaii blatant discrimination as found in California was absent, but after acquisition of the Islands many of the mainland attitudes were reflected in the policies of the Hawaiian Territorial Government. Thus, the Third Report of the Commisioner of Labor of Hawaii in 1905 "was largely devoted to an exposition of the complaints leveled against the Asiatics because of their competition with the Whites in non-plantation pursuits..../T/he resentment...developed to the point that organizations were formed and programs for legal restraint were directed against them." The territorial legislatures of 1903 and 1905 seriously entertained proposals to prevent

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69/ House Select Committee Investigating National Defense Migration Pursuant to H. Res. 113, National Defense Migration, Fourth Interim Rep. 77th Cong., 2nd Sess. 87 et. seq. (1942).

Asiatics (aliens ineligible for citizenship) from engaging in certain types of occupations. 70/

Restrictions were present in the political arena and in public service. In the first two decades the Chinese and Japanese consistently had the lowest percentage of eligible voters registering to vote. The reason for this was stated by one commentator as follows:

> To understand why so few Orientals who can register do so, it is necessary to observe the registration policy of election officials in the territory. Up to 1922 it was the custom to require documentary proof of Hawaiian birth before any person of Oriental ancestry was allowed to vote....The expense of these documents was so high as to be almost prohibitive, and as a consequence many men, and more women, of the Oriental races were deterred from voting. 71/

It was not unnatural, given these political restrictions, to expect comparatively low representation of Japanese and Chinese in the public service--both elective and appointive--at the same period. 72/ Despite the low representations, in 1925 Hawaii passed an act 73/ aimed at reducing public service employment of Chinese and Japanese by requiring all employees of the territory and counties to be citizens.

But the bitterest fight was to take place over the private foreign-language schools. Private foreign-language schools had started even prior to the Island's annexation to the

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70/ A. Lind, An Island Community 271 (1968).

71/ R. Littler, The Governance of Hawaii 69 (1929).

72/ Id. at 74-75.

73/ Act 231 (Sess. Laws 1925).

United States in 1898. They were initially church-sponsored and had as their major purpose the continuation of a particular religious tie for the community involved. Thus, a German language school in connection with the Lutheran Church was started in 1882; a Portuguese language school in 1889; Chinese schools began in 1892; and in 1896, the first Japanese school was started. 74/ For the Japanese these schools not only served a religious purpose--the first ones were Christian mission schools but later Buddhist schools predominated--but also filled an educational need, since many Japanese were contract laborers intending to return to Japan after the period of indenture had expired. 75/

By 1920, the Japanese had organized 163 private foreign-language schools in Hawaii with approximately 400 teachers serving slightly more than 20,000 pupils. In addition, there were ten Korean schools with 800 pupils in attendance and twelve Chinese schools teaching 1,150 pupils. 76/

74/ Governor of Hawaii to the Secretary of the Interior, Ann. Rep. 5 (1922). (Hereinafter cited as Ann. Rep. and date).

75/ Between 1885-1900, 70,000 Japanese contract laborers came to Hawaii. From 1901-1907 another 11,000 Japanese came to the Islands. U.S. Dept. of Interior, A Survey of Education in Hawaii Made Under the Direction of the Commission of Education 108-109 (Bulletin No. 16 1920). (Hereinafter "Survey of Education").

76/ Id. at 112, 114.

All of these schools supplemented the public school system where English was the required medium of instruction, 77/ and all were run exclusively by private contributions. Most of the schools had either two- or three-hour sessions, an hour or an hour and one-half prior to the opening of the public schools and the same period of time after the close of the public school day. In addition, many of the Japanese children attended their schools on Saturday and during the summer, when public schools were on vacation. 78/

In 1919, the Governor of Hawaii, a Federal appointee, encouraged an act to be passed to limit the effectiveness of the foreign-language schools. Contrary to the Governor's expectation,

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77/ Hawaiian could be taught in addition to English in the high schools. 31 Stat. 141 (1900), Sec. 1826, Ch. 19, ser. A-22 /1935/ Laws of the Terr. of Hawaii Reg. Sess. 22. At the outset where there was any conflict between the Hawaiian and English versions the Hawaiian version was to control but the law later was changed so that the English version was binding. Id. Sec. 8, Ch. 1, ser. A-1 /1943/ Laws of the Terr. of Hawaii Reg. Sess. 1. The basic Organic Act passed for Hawaii in 1900 required English in both the legal and educational systems. Act of April 30, 1900, Ch. 339, 31 Stat. 141. It stated that "all legislative proceedings shall be conducted in the English language." Id. Sec. 44, 31 Stat. 148. Jurors were also required to know English to serve on the petit or grand juries. Id. Sec. 83, 31 Stat. 157. Initially laws were published in English and Hawaiian, but subsequently promulgation was by publication in English only.

78/ Survey of Education 114.

there was a sharp outcry against the legislation 79/ leading the Governor to request a survey of education in Hawaii. The survey, which examined both public and private schools, subjected the private foreign-language schools to particularly careful scrutiny 80/ and recommended their abolition unless specifically established in the future by the Territorial Department of Education.

The Survey Commission argued against the foreign-language schools on three grounds: (1) the adverse effect on the health of the children as a result of the long day, (2) the adverse effect on progress in the public schools, and (3) the influence on loyalty to America because of the retention of Japanese culture, ritual, and in some cases worship of the Emperor. Interestingly enough, for the non-citizen the Survey Commission made an exception, going so far as to suggest instruction in the native tongue. 81/ This latter suggestion, however, went unnoticed.

The Japanese and Chinese communities were shocked at the report. Quickly they organized and a group of leading Japanese suggested a milder alternative providing for regulation rather than abolition. 82/

79/ Ann. Rep. (1920) 7.

80/ The analysis of the content of the Japanese-language school textbooks alone composed a 24-page appendix to the resulting Survey of Education.

81/ Survey of Education 140.

82/ B. Smith, Americans from Japan 110 (1948).

The Act of 1920 followed these recommendations. It provided that all private foreign-language schools and teachers would have to obtain a license and be subject to various regulations of the Department of Education. Private foreign-language schools were limited to one hour a day, and the courses, textbooks, attendance requirements, and age qualifications of the pupils were all to be prescribed by the Department of Education. Teachers in these schools would be required to be able to speak, read and write the English language and be versed in American history and government. 83/

The declared object of the Act was to regulate these foreign-language schools and the teaching of foreign languages so that the Americanization of the pupils might be furthered. The Governor said:

> When one considers that of the 16,548 children enrolled in foreign-language schools, 16,178 are American citizens and will take part in the Government of the United States, and especially the local government of Hawaii, it is not difficult to understand the concern which the alien-language school gives the citizens of Hawaii. If these children are to be Americans, the American language and American principles as developed in the American public schools must be a dominating factor in their lives. As long as the parents of these children agressively foster their alien nationality and alien ideals, thus constituting a nucleus of alien principalities, they constitute a potential if not actual menace to aafriendly adjustment and good will.

83/ Act 30,[1920] Laws of the Terr. of Hawaii Spec. Sess. 30, as amended, Act 171, [1923] Laws of the Terr. of Hawaii Reg. Sess. 204, as further amended, Act 152 [1925] Laws of the Terr. of Hawaii Reg. Sess. 178.

> I sincerely hope that the not far distant future will find the alien parents will withdraw from their attempt to alienize our American children. 84/

It is interesting to note that although the situation was somewhat comparable to Puerto Rico, since only 900 children out of the 36,000 in the public school system spoke English as a native tongue, 85/ no comparable pressure for instruction in the native tongue was evident. The extensive Survey of Education, with the exception noted above, never suggested it.

The matter might well have rested there except that when the joint committee of Japanese and Americans met in 1921 to revise the textbooks, the American members, to the surprise of the Japanese members, proposed that the kindergarten, first, and second grades of the Japanese foreign-language schools be abolished. By threatening complete abolition of the schools at the next legislature they obtained consent of the Japanese members to extensive changes and close supervision. 86/

The Japanese community now held mass meetings, forced their compatriots on the committee to resign, and engaged counsel to prevent the regulations from taking effect when school opened in 1922 and to test the constitutionality of this legislation. The District Court granted a preliminary injunction against enforcement of the Act on the ground it was unconstitutional.

84/ Ann. Rep. (1923) 8-9.

85/ Survey of Education 38.

86/ Smith, op. cit. supra note 82, at 111.

> An attempt is made to justify the Act, however, because of the peculiar conditions prevalent on the Island. They have a large Japanese population there, and it is said that within the next 15 years a majority of the electorate will be American citizens of Japanese extraction. It is further said that the Japanese do not readily assimilate with other races; that they still adhere to their own ideals and customs and are still loyal to their emperor. It is a matter of common knowledge that the Japanese do not readily assimilate with other races, and especially with the white race. This is in part a matter of choice and in part a matter of necessity, because they cannot assimilate alone. No doubt the Japanese tongue will be spoken on the Islands for generations to come, and no doubt the Japanese will be slow to give up their customs and their ideals; but we took the Islands cum onere and extended the Constitution of the United States there, and every American citizen has a right to its protection. You cannot make good citizens by oppression or by a denial of constitutional rights and we find no such conditions there as will justify a departure from the fundamental principles of constitutional law. 87/

The Supreme Court sustained the lower court's opinion.

> ...The School Act and the measures adopted thereunder go far beyond mere regulation of privately supported schools...They give affirmative direction ...Enforcement of the Act would probably destroy most if not all of them...The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue. 88/

87/ Tokushige v. Farrington, Governor of Hawaii, 11 F. 2d 710, 714 (C.A. 9 1926).

88/ Farrington, Governor of Hawaii v. Tokushige, 273 U.S. 284, 298 (1927).

As a result of this litigation, an official severance was made between the private foreign-language schools and the public authorities on June 30, 1927. 89/

The attack on the Japanese private foreign-language schools in California was part of the general strategy of harassing normal development in the Japanese communities already noted. Initially the attack was broader and involved the attempted segregation of the Japanese in schools of their own. The most famous of these attempts was the order on October 11, 1906, to send all Oriental students to segregated schools in Chinatown. Since there were only 93 Japanese students out of 25,000 and no oral or written complaints were ever made against the Japanese pupils by the parents of White pupils, it appeared to be a political tactic to divert attention from the indictment of two members of the school board. When,as a result of Federal government intervention and persuasion, this and similar orders failed, the attack moved on to the private Japanese-language schools.

These schools had started in Seattle and San Francisco in 1902, and by 1918 there were some 80 of them in the States, with 2,442 pupils, and 47 kindergartens with 1,023 children. 90/

89/ Ann. Rep. (1927) 79; Ann. Rep. (1928) 83.

90/ Hearing Before the House Committee on Immigration and Naturalization, 66th Cong., 2nd Sess., pts. 1-4 at 1049 (1920). The numbers may be inflated. The Japanese Association reported 40 in California in 1920 which obviously would put the total number substantially less than in the text.

They were described as follows:

> Among the common sights in those parts of California where Japanese communities exist are straggling groups of little Japanese children walking slowly home along the streets or highways at four-thirty or five o'clock in the afternoon. The observer is puzzled, for the public schools have been out for two hours or more. Inquiry brings the information that they have been attending, since school hours, the Japanese-language schools, whose primary purpose is, as their name implies, to teach the Japanese language, the language ordinarily of their homes and their churches. The schools are held in church basements, parish houses, parsonages, Japanese community halls, or special language-school buildings. Teachers are employed by local Japanese boards of trustees. Regular, graded instruction is given in Japanese language and literature and in reading, writing, and speaking Japanese. 91/

In addition to a baby-sitting, overseeing function, they gave a cohesiveness to the community and were the primary basis of close friendships:

> I was 17 years old then, and now that I think back I guess I was always busy. First it was regular high school--then into the Japanese school. We walked both ways to save money so that means we had school from about 6:30 in the morning to 6:00 at night.
>
> I sometimes wished I didn't have to go to Japanese school. I would have liked to try out for some of the regular after-school activities with some of the ha-ku-jins [White people], but I never could. I guess I enjoyed Japanese school though--I never

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91/ R. Bell, Public School Education of Second-Generation Japanese in California 17 (1935).

> really learned Japanese, but I made most of my close friends there. Some of my friends had it rougher--they would help in a grocery store, or deliver newspapers on top of all the other things.
>
> Even if I did go to school just to meet my friends and fool around, my parents never minded it just as long as they knew I was going to Japanese school. 92/

Thus, they performed the same functions as many church-related shools performed for other ethnic groups. The Japanese were aware of this and noted the different government reactions:

> Aside from the schools for instructing Japanese in English, there are seventy-five so-called 'supplementary' schools for teaching children the Japanese language. These are attended by the Japanese pupils after the public schools close for the day. They are primarily for the study of the Japanese language and are not intended to perpetuate the traditions and moral concepts of Japan. Of course, these are criticized by hostile Americans. But says Professor Millis, 'They are supplementary schools, and at the worst, there is much less in them to be adversely criticized than in the parochial schools attended by so many children of the South and European immigrants. No real problem is yet evident connected with Japanese children on American

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92/ Cited in H. Kitano, Japanese Americans: The Evolution of a Subculture 25 (1969)

> soil.' These are some of the more obvious facts concerning the status of Japanese residents in California. 93/

In 1921 California passed a law carefully modeled on the Hawaiian statute of 1920. After the Farrington decision the California Attorney General indicated that the law was also

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93/ State Board of Control of California, California and the Oriental 214-215 (1920). One commentator at least is of the view that the Japanese language schools in California weren't very effective:

> They appear to have been less attended than those in Hawaii, as Buddhism seems to have been less followed. In the Los Angeles area about a third of the Nisei went. Nor did those who attended learn much. They were tired of school by the time they go there, they resented this additional mark of their difference from their classmates, and they were in revolt against the whole parental culture. At some time in their high school careers, coincident perhaps with the dating age and the recognition of a social gulf, coinciding too with their first serious thoughts about getting a job, the Nisei began to take the language more seriously. But by then it was too late to learn much.
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> The efforts of most immigrant groups to maintain language schools at great personal sacrifice illultrates how high the symbolic value of language is. The schools would have been abandoned on any pragmatic test of their success. It was not so much the language the parents wanted communicated as the culture and traditional values they lived by. Was there any way they could have known that learning must build upon desire, and that the Nisei desired nothing so much as to be like other Americans? Smith, op. cit. supra. note 82, at 230.

violative of the Constitution and would not be enforced. 94/ The schools then grew in numbers, increasing in California to 248 in 1940 with 455 teachers, 17,834 students, and a yearly expenditure of $397,000. Oregon had 22 schools, Washington 21, and there were a few others scattered throughout the country. 95/ Questions continued to be raised concerning the course content of these schools, particularly with respect to loyalty to the Emperor of Japan who under Shintoism had a hierarchical religious role in addition to a temporal one. Bills were introduced in the California legislature to prohibit the teaching of allegiance to a foreign government in these language schools and the California State Board of Education approved certain textbooks for use in these schools. 96/

Following the outbreak of World War II questions were quickly raised concerning the location and internment of Japanese aliens and citizens on the West Coast. The Japanese, under scrutiny and public pressure, had closed the schools in all three states after Pearl Harbor but the fact of their existence up to that time was raised again and again at the hearings as proof of the potential danger the Japanese represented on the West Coast:

94/ Opinion of Att'y. Gen. of Calif. rendered to Hon. Wm. Cooper, Supt. of Public Instruction (May 2, 1927).

95/ Hearings Before the Select Committee Investigating National Defense Migration Pursuant to H. Res. 113, 77th Cong., 2nd Sess. at 11086, 11393 (1942).

96/ *Id.* at 11086.

> Well, that in itself might have been all right, had they not established Japanese-language schools. In the establishment of these language schools, Japanese Buddhist teachers were brought in under the exceptional provision of the immigration laws. Their religious as well as the educational background was Japanese both as to culture, ideas, ideals, action, and thought. In the Japanese-language schools, from the information we have been able to receive, the Japanese indoctrination of American-born Japanese occurred. 97/

> I would say that it would be almost impossible for any man or for any agency to determine the extent of the loyalty of any Japanese to our country when you take into consideration...the fact that the Japanese children in my particular area and throughout practically the entire State of California and, perhaps, the United States, as far as I know--I am only familiar with California--attend our schools for certain time and then they in turn attend a Japanese language school at which, we have from very good authority, they are taught the Japanese customs that are brought down to them from the old country; that the Japanese religion enters into it, and that they have in many cases been taught that the Japanese Emperor is their Emperor, no matter if they, by accident of birth, happen to be born in California or any other part of the world. 98/

On the other hand Japanese spokemen pointed out the schools were in part a necessary reaction to the discrimination to which the Japanese were subject. With employment channels channels frequenly limited to their own community the Japanese

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97/ Testimony of Robert H. Fouke, Id. at 11071.

98/ Testimony of H. L. Strobel, Id. at 11091.

language became essential. Further the State of California refused to place the Japanese language in the public school curriculum. 99/

> They set up these language schools for various reasons. No. 1 They thought that since they enjoyed the fruits of American life that they should contribute something to America. They thought that the fine parts of Japanese culture could be integrated into American life and that the second generation of Japanese, if they were able to read and write, could thereby discover the better side of Japanese culture and they could give that as their contribution to America and, if they could do that, the parents would die happy.
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> . . .
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> There is another reason why a study of the Japanese language is encouraged and that is because a knowledge of the Japanese language is essential to the economic picture into which the Japanese man or woman has to fit. At least, in this generation most of our employers happen to be Japanese.
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> We were discriminated against in private industry and, therefore, the only other channel into which the Japanese people could gain an economic livelihood was in the Japanese group. It was essential for us to learn the Japanese language so that we could converse intelligently with our employers. 100/

The final report of the Tolan Committee which investigated Japanese evacuation emphasized the Japanese-language schools but in discussing the German and Italian alien and citizen schools were not mentioned at all. 101/

99/ Testimony of Mike J. Masaoka, Id. at 11145.

100/ Testimony of Mike J. Masaoka, Id. at 11222, 11223.

101/ National Defense Migration, op. cit. supra note 69, at 227-245.

After Pearl Harbor the schools in Hawaii again came under attack. In 1943 the Hawaiian Legislature once more passed an Act regulating the private foreign-language schools which was designed to prevent very young children from attending these schools. 102/

Three private Chinese-language schools took the issue to court. A three-judge district court in Hawaii held in their favor, again declaring the law unconstitutional.103/ The Supreme Court, however, held that the case should have been litigated in the territorial court rather than the United States District Court and reversed on this procedural ground. 104/

The law was then softened to provide that no child who had not graduated from second grade in public schools or its equivalent should be taught a foreign language in any school for more than five hours (including assigned homework) in

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102/ L. 1943, c. 104, Sec. 1-6; Revised Laws of Hawaii 1945, Sec. 1871-1876. No teaching of a foreign language in any school was permitted prior to the fourth grade or before the child was 15 years old unless a board certified that the child was reasonably well versed in the English language. In addition, prospective teachers were required to take examinations to establish their knowledge of English. Enforcement was by injunction rather than by immediate criminal penalties.

103/ Mo Hoc Le Po v. Stainback, Governor of Hawaii, 74 F. 2d 852 (D. C. Hawaii 1947).

104/ Stainback, Governor of Hawaii v. Mo Hock Le Po, 336 U. S. 368 (1949).

a calendar week. School officials retained the right to visit the schools and the Department of Public Instruction was still required to receive copies of textbooks used in the curriculum. 105/

In 1959, when Hawaii became a State, the troublesome Federal law regulating private foreign-language schools was repealed. 106/ In Hawaii, as of May 1966, there were 88 private Japanese-language schools in the State attended by 12,592 students and three Chinese-language ones. They all met after regular school hours. 107/

In the continental United States the internment camps which were operational on the West Coast against Japanese aliens and citizens during World War II effectively disrupted Japanese life, including the language schools. The way back has been slow. In the mid-sixties there were only 2,000 children in the Los Angeles Japanese-language schools, one-fifth of the number in 1939. 108/

105/ Ch. 31, ser. A-55, Act 72, [1949] Laws of the Terr. of Hawaii Reg. Sess. 100.

106/ Ch. 68, Sec. 1 [1959] Laws of the Terr. of Hawaii.

107/ Letter from Yukio Oyama to author, Nov. 12, 1966.

108/ Kitano, op. cit. supra note 92, at 25.

MEXICAN-AMERICANS*

The Spanish Conquistadors came to Mexico in 1519. They acknowledged at that time that the Indians were indeed human and a royal decree permitted the Indians to intermarry with their conquerors. 109/ The mass intermarriage that took place created quite rapidly a truly bilingual and bicultural Indian-Spanish nation.

The population gradually moved northward. The riverbanks of the Rio Grande were settled in 1598; a settlement was soon after established in Santa Fe in 1603. 110/ By 1790, an estimated 23,000 Spanish-speaking people were living in areas which later became the states of Arizona, California, New Mexico and Texas. 111/

For ease of exposition we shall follow school language policy in relation to Mexican-Americans in only the three largest states of the Southwest: Texas, California and New Mexico. We shall see three somewhat different policies adopted toward the exclusive use of English in the school system. In New Mexico use of the native tongue in the school system was almost consistently permitted although the effect on the Mexican-American community was not always benign, since a frequent result was the exclusion of the Mexican-American community from the mainstream of life in the state. In California at the state level English only gradually became state policy, reflecting general hostility toward the Mexican-American community. In Southern California some accommodation was made to the native Spanish-speaking population, although until recently this was less as an educational tool and more as a segregation device. In Texas, as white Anglo immigration increased, use of English as the exclusive language of instruction in the school system was imposed, with very minor exceptions, as part of a general pattern of discrimination against the Mexican-American community.

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* The author would like to thank the U. S. Commission on Civil Rights for making available to him in draft their second report on Mexican-American Education: Cultural Exclusion of Mexican-Americans in Public Schools of the Southwest.

109/ Steiner, "La Raza: The Mexican-Americans" 4, The Center Forum 4 (Sept.1969).

110/ H. Manuel, Spanish-Speaking Children of the Southwest 14 (1965).

111/ Id. at 4.

Due to the influx of westward-moving American pioneers which soon followed the Spanish-speaking population, the Republic of Mexico in 1824 issued a general colonization law for the Southwest area: no foreigner was to be granted land; immigrants must become citizens. Although the immigrants, primarily the Anglos, did abandon their homeland and its sovereignty, they did not abandon their American institutions. Because they sought economic opportunities, they never had any real intention of becoming Mexican.

The settlers, in fact, had little opportunity to learn about their new country. They did not learn the Spanish language or its culture, because the only schools available were the ones that the colonists started themselves. 112/ By 1836 Texas, with its large and growing number of Anglo colonists, had fought and won its independence from Mexico and was declared an independent republic. In 1845, it was admitted to the Union.

After the Mexican-American War of 1848, Mexico ceded to the United States a vast territory, including California, Arizona, and New Mexico and also approved the prior annexation of Texas. All citizens of Mexico residing within the ceded domain became United States citizens automatically if they did not leave the territory within one year after treaty ratification. Thus, the original inhabitants of the Southwest--the Spanish-speaking people--became a minority group in a country different in language and culture.

The original California State Constitution was drafted in a context of linguistic equality. Although only eight of the forty-eight delegates to the 1849 Monterey Constitutional Convention were native speakers of Spanish (deducing this from their Spanish surnames), the Convention elected an official translator, and all resolutions and articles were

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112/ T. Fehrenbach, Lone Star: A History of Texas and the Texans 167 (1968).

translated before being voted upon. 113/ The final document was simultaneously published in Spanish and English; it recognized the importance of Spanish by providing that all laws shall be published in English and Spanish. 114/

At the end of 1848, there were approximately 15,000 residents in California, half of Mexican descent. But the Gold Rush quickly changed that. Within a year the population expanded to approximately 95,000 people, almost all Anglo-Americans, The Gold Rush not only initiated a monumental increase in the Anglo population but also resulted in a struggle over land, both of which operated to the political detriment of the Spanish-speaking natives.

At the time of statehood 18% of all education in the state was private and Catholic. 115/ These private schools were composed of pupils mainly of Spanish descent and the children were taught in the Spanish language under the direction of

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113/ Klotz, "The Confluence of Cultures" in Telefact Foundation, The Original Constitution of the State of California, 1849 (1965).

114/ Constitution of 1849 (approved in admission of California as a state, Sept. 9, 1850) Misc. Provisions, Act XI, Sec. 21. "All laws, decrees, regulations and provisions which from their nature required publication shall be published in English and Spanish." 1 Thorpe, American Charters, Constitutions and Organic Laws 404 (1906).

115/ D.Ferris, Judge Marvin and the Founding of the California Public School System 92 (1962).

the padres. Initially, these schools were state-supported, but in 1852 a new law prohibited religious schools from sharing in the apportionment of state funds.

In 1855 the State Bureau of Public Instruction stipulated that all schools must teach exclusively in English. This linguistic purism in the state-supported school system went hand in hand with the nativistic sentiments expressed in other fields. For example, in the early 1850's the state passed statutes suspending the publication of the state laws in Spanish, requiring court proceedings to be in English, imposing a new tax of $5 a month for foreign miners and a $50 head tax to discourage the immigration of people ineligible for citizenship. 116/

The language issue in California became heated, with Catholic Church officials taking the lead in opposing the imposition of English as the sole language of instruction. In Santa Barbara (where, in 1855, three-fifths of the population spoke only Spanish) the Mexican-Americans succeeded in retaining Spanish instruction. In 1856, Mr. J. R. de Neilson undertook to create a bilingual Catholic school for boys. Los Angeles Spanish-Americans petitioned for a

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116/ L. Pitt, The Decline of the Californios 226 (1966).

public subsidy to pay his salary, but the petition was denied on the grounds of separation of Church and State, and the school closed. 117/

As nativism grew and had its effect on the public schools, California's Catholic school system began to grow. But the Anglo-Protestants in this state--unlike those fighting the German parochial schools in the Midwestern states--never had to launch an attack on Catholicism and its school system. For a short time after the passage of the restrictive 1855 law, the Church under the leadership of the Baltimore diocese itself became a prime mover for acculturation. 118/

Although the Civil War and the Gold Rush changed the character--and the language--of Central California by hastening acculturation, Southern California remained a Spanish-speaking region for some time. Spanish newspapers and bilingual schools flourished in the 1870's; there were Spanish-speaking judges, elected officials, and community leaders. 119/ But the tide had turned and on the state level officialdom was now tied to a monolingual society. In 1870 a statute was

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117/ Id. at 227.

118/ Id. at 216.

119/ Jack D. Forbes, "Mexican-Americans: A Handbook for Educators," in Hearings before the House General Subcommittee on Education of the Committee on Education and Labor on H.R. 9840 and H.R. 10224, 90th Cong., 1st Sess., at 508 (1967).

enacted providing that "all schools shall be taught in the English language." 120/ The California Constitution was amended in 1894 to restrict the vote to those who could read and write English and require official proceedings in all branches of government to be conducted and published "in no other than the English language." 121/

The situtation in Texas during the 1850's differed from that in California. No true public school system was established in Texas prior to the Civil War, and "the notion of the public school as an Americanizing agency simply never arose" 122/ in Texas during this period. The state reimbursed parents for each child enrolled in any recognized school. Non-Anglo groups of Mexicans either organized their own schools in the same manner or had no education at all. 123/

The nativistic element, the Know-Nothing Party, swept Texas in 1855, the same year that it swept California, but with different results:

> An air of unreality surrounds the entire Know-Nothing phenomenon in Texas. There were almost no Catholics in Texas, and the foreign, heavily

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120/ Calif. Stat. Ch. 556, Sec. 55 (1870).

121/ Constitution of 1879 as amended Nov. 6, 1894, Art. II, Sec. 1 in 1 Thorpe, op. cit. supra note 114, at 452.

122/ The Texas courts had held that the creation of country school districts and the assessment of general taxes for education was constitutional. Fehrenbach, op. cit. supra note 112, at 303.

123/ Id. at 303.

> Catholic elements that existed, Germans and Mexicans, were politically inert. The Party really had little to sink its teeth in, in Texas...as quickly as they formed, the Know-Nothings faded. 124/

The Anglo-American immigration to New Mexico was of "an entirely different character, in quality and quantity, from the immigration that so quickly engulfed the Spanish-speaking in Texas and California." 125/ Only about one hundred Anglos settled in the state prior to 1846, and most of these married into prominent native families. Since there was never a large influx of farm families, competition for resources did not come for another thirty years in that state.

The two earliest New Mexico school laws, those of 1863 and 1869, contained no language provisions. The conditions in the territory leave no doubt that the public schools provided for in the laws had a predominantly Spanish character. There were practically no Anglos in the state; the laws were in fact first drafted in Spanish and translated only later into English. According to the 1874 Annual Report of the territorial school authorities, the composition of the New Mexico public schools were 5% English, 69% Spanish, and 26% bilingual. 126/

Liberalism and leniency toward the Mexicans prevailed for another decade. As late as 1884, a school law was passed

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124/ Id. at 333.

125/ C. McWilliams, North From Mexico 116 (1968).

126/ Kloss 311.

in New Mexico which recognized the public Spanish-language elementary schools: "Each of the voting precincts of a county shall be and constitute a school district in which shall be...taught reading, writing...in either English or Spanish or both, as the directors may determine." 127/

Gradually, Anglo-Americans from the east who were unsympathetic toward Mexican culture came to dominate the territory. 128/ In 1891 a New Mexico statute was passed requiring all schools in New Mexico to teach in English. 129/ But, as was the case with the Indians and the Japanese-Americans, the emphasis on English-language instruction was part of a broader struggle over land which was developing between the White settlers and the Mexican-Americans. Many Mexican-Americans were deprived of their land when they could not establish their rightful ownership, frequently because the U. S. Government requirements were not made clear to the native Mexican-Americans, 130/ and in some cases the land was taken by force. Some commentators estimate that Mexican-Americans lost approximately two million acres of private land and 1,700,000 acres of communal land. 131/

127/ *Ibid*.

128/ Forbes, *supra* note 119, at 508.

129/ Kloss 312.

130/ N. Gonzales, *The Spanish Americans of New Mexico: A Distinctive Heritage* in Univ. of Calif. *Mex.-Am. Study Project* 36 (1967).

131/ *Id*. at 38.

One authority describes the situation in 1885:

> ...for several years past...few Mexicans have been allowed to live within these limits peaceably and without any molestation for any considerable length of time.132/

The conservative trend gained momentum after the turn of the century. Between 1900 and 1912 (the year in which New Mexico finally achieved an Anglo majority and statehood), there was a continuing, increasing emphasis on instruction exclusively in English in the school system. 133/

The New Mexico Enabling Act indicated the English bias of the Congress. It required that the "schools shall always be conducted in English" and that "ability to read, write, speak and understand the English language without an interpreter shall be a necessary qualification for all state officers and members of the state legislature." 134/ Interestingly enough, although Congress the following year, under pressure, withdrew the English-language qualification for state officials, 135/ the English-language requirement for the school system remained.

However, the New Mexico State Constitution contained a number of provisions envisioning English and Spanish usage. Thus,

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132/ W. Keleher, The Fabulous Frontier 90 (1945).

133/ Kloss 313.

134/ Act of June 20, 1910, Ch. 310, Sec. 2; 36 Stat. 559 (1910).

135/ 37 Stat. 39, 42 (1911). See also 47 Cong. Rec. 1251, 1364 (1911).

immediately following the provision implementing the English-language requirement for state office, the Constitution requires all laws to be published in both English and Spanish and the ballots ratifying this first constitution be printed in both languages. 136/ Despite the requirement that public schools be conducted in English, the Constitution requires that "teachers shall be trained in Spanish and English to qualify them to teach Spanish-speaking pupils."137/ There is also a specific provision that children of Spanish descent shall never be denied admission to the public schools. 138/

In Texas, the problem grew worse as the number of new groups of Mexicans crossing the border increased, enlarging the Mexican population of Texas by 76% between 1900 and 1910. Because they came in relatively large numbers to places which already had Mexican majorities, they initially felt no need to gain links with the Anglo population. Aiding the separation was a deep racial barrier between the dark-skinned Mexican and the color-conscious White southerner.

From 1908 to 1925, the whole border was aflame once again. As World War I approached in Europe, the Texans suspected the Mexicans of being in league with the Germans. 139/ It

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136/ N. Mex. Const. Art. 21, Sec. 5 (1911).

137/ N. Mex. Const. Art. 12, Sec. 8 (1911).

138/ N. Mex. Const. Art. 12, Sec. 10 (1911).

139/ McWilliams, op. cit. supra note 125, at 111.

was, therefore, not surprising that demands were made for the establishment of a quota from Mexico under the Immigration Act of 1924. Both the Box Bill (1925) and the Harris Bill (1926) would have limited immigration for Mexicans. The proponents of these bills were, states one author, "labor unions, social workers, and bigots, but they were defeated by the railroads and especially by the large agricultural interests who wanted much peon labor." 140/

As the tools of discrimination were increasingly applied against the Mexicans, Texas passed its first state statute on the question of language in the schools. In 1918 Texas law required all public schools to be conducted in English, except in certain border counties or cities where Spanish could be used in the elementary grades. 141/ The disdain and open hostility by officialdom for the Mexican child is reflected by the statement of a Texas district superintendent of schools:

> Then the Mexican does all the grubbing. If a man has very much sense or education either, he is not going to stick to this kind of work. So you see it is up to the white population to keep the Mexican on his knees in an onion patch or in new ground. This does not mix well with education....
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> The Mexican himself is...not aspiring. He doesn't care to learn English--the very thing that would lift him...(the) Mexicans care nothing

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140/ J. Burma, Spanish-Speaking Groups in the United States 42 (1954).

141/ Texas Acts, 4th C.S.P. 170 (1918); Vernon's Anno. Tex. Stats. P.C. 27.

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> about going to school, and practically all the white people care not whether they go. 142/

In 1928 contrary to the state law requiring English language instruction passed a decade earlier:

> The teachers in these (New Mexico) public schools are Spanish-Americans and practically all of the instruction in the schools is carried on in the Spanish language. 143/

Segregation in the schools became a popular practice in Texas and--to a lesser degree--in California, with linguistic difficulties of the Mexican child frequently given as the basis to justify this segregation. 144/

And the Mexican-American was sensitive to the deceitful role language was playing:

> It must be confessed that the reason for maintaining a separate Mexican school is sometimes neither a consideration of the Mexican child nor a matter of difficulty of access to some other school...public sentiment rather than pedagogical wisdom seems often to be the factor back of segregation. 145/

142/ Cited in H. Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas* 76-77 (1930).

143/ C.D. Bohannan, *Report on Survey of Chacon, New Mexico Community* 2 (1928) as quoted in Gonzalez, *op. cit. supra* note 130, at 16. In 1925 the New Mexico legislature provided for high school instruction in Spanish by teachers qualified to teach both in Spanish and in English. The law was repealed in 1962. N. Mex. Laws, Ch. 21, Sec. 41 (1962).

144/ J. Scotford, *Within These Borders* 42 (1953).

145/ Manuel, *op. cit. supra* note 141, at 76.

Perhaps, for this reason, protests against teaching in the Spanish language were taking place in schools in New Mexico at the same time. Senator Dennis Chavez stated in 1932:

> English is the language the native must employ in getting a job and in keeping it. I love Spanish tradition, I love the people and the ancestors I hail from, and one is prouder of his background, but I am prouder still of the ideals and traditions symbolized by the Stars and Stripes, so without apologizing for the past, I insist that in New Mexico the teaching of English should be stressed. 146/

But an emphasis on English can be easily overdone, and it was. Well-meaning and conscientious educators taught only in the English language. In some schools the speaking of Spanish was strictly forbidden both in the classroom and on the playground. The theory was that children would learn English if they were required to speak English and nothing but English. 147/

But more than language instruction was involved. In 1937, New Mexico spent $51 per pupil in the predominantly Anglo counties and less than $35 in the Spanish-speaking counties. 148/ Such statistics caused Senator Sanchez to remark:

146/ E. Lahart, *The Career of Dennis Chavez as a Member of Congress* 1930-1934 71 (1958).

147/ N.E.A., "The Invisible Minority...Pero No Vencibles" in Hearings before the House General Subcommittee on Education of the Comm. on Education & Labor on H.R. 9840 and H.R. 10224, 90th Cong., 1st Sess., at 181 (1967).

148/ G. Sanchez, *Forgotten People* 32 (1949).

> The educational policy...in New Mexico is startling in its ineptitude. It seems almost unbelievable that, insisting as we do that the Americans of Spanish descent learn English, we give him less opportunity to learn that language than is given to any other group in the state. 149/

During World War II, the circumstances that Mexico was our ally and that Mexican-Americans made a good record in the service, in addition to our emphasis on the Good Neighbor Policy and our dependence on Mexican labor, combined to usher in a more lenient attitude toward the Mexican-Americans. 150/ In 1941 New Mexico required all public elementary schools, with limited exceptions, to teach Spanish in the fifth to eighth grade 151/ and in 1943, by state law, created the position of State Supervisor of Spanish "to bring about an improvement in the teaching of Spanish in the schools of the State and in order to insure the retainment and the development of the Spanish language, with a view of future inter-American relations."

In 1943 the Texas State Department of Education issued a two-point statement of policy. The first proposed that the curriculum be revised to give all children a better appreciation of Latin American history and culture. Conferences and workshops were held the same year in Texas under state auspices to seek ways of improving the situation, particularly by training elementary teachers in the use of Spanish. 152/

149/ Id. at 33.

150/ McWilliams, op. cit. supra note 125, at 272.

151/ N. Mex. Laws Stats. Ann. 73-17-2.

152/ Scotford, op. cit. supra note 144, at 43.

The second point officially took issue for the first time with the common practice of racial segregation allued to earlier. It stated:

> Any administrative or curricular practices which isolate the Latin American children solely on the basis of such descent are deemed pedagogically unsound, contrary to state and national policy, and inimical to the best interests of...those groups of children. 153/

Although the California School Code permitted segregation of "Indian children or children of Chinese, Japanese, or Mongolian descent," it did not mention Mexicans. But, as noted above, even without formal sanction the practice of segregating Mexican children developed. In some instances, the practice was accomplished by gerrymandering school districts. More commonly, the authorities rationalized their action on language grounds, alleging that segregation was related to ability to speak English.

The Courts, as well as the school administration, had begun to examine local practices of segregation purportedly based on language deficiency and had found racial discrimination. The United States District Court in Austin ruled segregation

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153/ Ibid.

of school children of Latin American descent illegal, with the limited exception for first grade pupils. 154/ California 155/ and Arizona Federal Courts 156/ also found racial discrimination masquerading under the guise of concern for language deficiency and set down strong guidelines before separation on the basis of language deficiency was permissible:

> English language deficiencies of some of the children of Mexican ancestry as such children enter elementary public school life as beginners may justify differentiation by public school authorities in the exercise of their reasonable discretion as to the pedagogical methods of instruction to be pursued with different pupils, and foreign language handicaps may exist to such a degree in the pupils in elementary schools as to

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154/ Minerva Delgado et. al v. Bastrop Independent School District of Bastrop County, Tex., et. al as reported in the Dallas Morning News, Para. 7., June 17, 1948, See also Cisneros v. Corpus Christi Independent School District No. 68-C-95 (S. D. Tex., June 4, 1970); Hernandez v. Driscoll Consolidated Independent School Dist., 2 Race Rel Rep. 34 (1957); Independent School District v. Salvatierra, 33 S. W. 2d 790 (Ct. Cir. Apps. Tex. 1930).

155/ Mendez v. Westminster School District, 64 F. Supp 544 (S. D. Calif. 1946) aff'd. Westminister School District v. Mendez 161 F 2d 774 (9 Cir. 1947). See also Romero v. Weakley, 226 F 2d 399 (9 Cir. 1955).

156/ Gonzalez v. Sheely, 96 F. Supp. 1004 (D. Ariz. 1951).

> require separate treatment in separate classrooms. Such separate allocations, however, can be lawfully made only after credible examination by the appropriate school authorities of each child whose capacity to learn is under consideration, and the determination of such segregation must be based wholly upon indiscriminate foreign language impediments in the individual child, regardless of his ethnic traits or ancestry. But even such situations do not justify the general and continuous segregation in separate schools of children of Mexican ancestry from the rest of the elementary school population, as has been shown to be the practice in the respondent school district. Omnibus segregation of children of Mexican ancestry from the rest of the student body in the elementary grades in the schools involved in this action because of language handicaps is not warranted by the record before us. 157/

The Federal government has recently recognized the need to respond to such segregation disguised as language assistance. The Director of the Office of Civil Rights in the Department of Health, Education and Welfare has declared it a violation of Title VI of the Civil Rights Act of 1964 to segregate on this ground unless:

1. Affirmative steps are taken to rectify the language deficiency;
2. Tests measure more than English language skills; and

157/ Id. at 1009.

3. Ability groupings permit acquisition of language skills quickly so as not to operate as an educational dead-end or permanent tract. 158/

Despite these Court decisions and high-level executive branch attention to the problem, the most recent survey of the Southwest by the U. S. Commission on Civil Rights found that "public school students of this ethnic group are severely isolated by school district and by schools within individual districts. 159/ This was most pronounced in New Mexico and Texas and to a significantly lesser degree in California and Colorado. 160/

158/ Memorandum from J. Stanley Pottinger, Director, Office for Civil Rights, H.E.W., to School Districts with more than Five Percent National Original-Minority Group Children (May 25, 1970).

159/ U. S. Comm. on Civil Rights, Ethnic Isolation of Mexican-Americans in the Public Schools of the Southwest 89 (Mex.-Am. Education Study Rep. 1 1970).

160/ Id. at 38.

AMERICAN INDIANS

From 1778, when the first treaty between the United States and an Indian nation was signed, until 1871, treaties, together with the appropriate Constitutional provisions, [161] were the main legal basis for Federal policies concerning Indians. On December 2, 1794, the first treaty agreement that included educational provisions was negotiated with the Oneida, Tuscarora, and Stockbridge Indians. This treaty provided for instruction in the arts of the miller and sawyer. This was soon followed by a treaty with the Kaskaskia Indians which provided an annual contribution for seven years to support a Catholic priest who was to instruct in literature. [162]

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[161] The Commerce Clause, "to regulate commerce...with the Indian tribes" (U.S. Const., Art. I, Sec. 8, Cl. 3) gives Congress plenary power over Indian affairs. The Property Clause (U.S. Const., Art IV, Sec. 3, Cl. 2) gives Congress power to dispose of and regulate all "property belonging to the United States." This has been held to extend to Indian property held in trust. The Supremacy Clause (U.S. Const., Art. VI, Cl. 2) makes Indian treaties and federal laws on Indian affairs the supreme law of the land, thus effectively eliminating state regulation over federally recognized Indian tribes, except as specifically allowed by Congress.

[162] F. Cohen, Handbook of Federal Indian Law 234 (1942).

In 1802, Congress made provisions for the expenditure of funds not to exceed $15,000 per year to promote "civilization among the aborigines." For another decade, this action stood as the sole indication that Congress had recognized responsibility for Indian education. Then, in 1819, Congress enacted a provision which "still stands as the organic legal basis for most of the education work of the Indian Service:" 163/

> The president may...employ capable persons... for teaching (Indian) children in reading, writing, arithmetic...for the purpose of... introducing among them the habits and art of civilization. 164/

The 1819 statute included a permanent annual appropriation of $10,000 which the President apportioned among the missionary organizations that had carried out educational activities for the Indians for the preceding three hundred years. During the next fifty years, the schools continued to be maintained either wholly by missionaries or with the joint support of missionary groups and of the Government. The annual appropriation, known as the "civilization fund," continued until the end of the treaty period in 1871.

No specific mention is made regarding the use of the English language in either the 1802 or 1819 provisions. Both attempt to promote "civilization." That the

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163/ *Ibid*.

164/ *Id*. at 240.

English language is the "civilized" tongue and the Indian language "barbaric" is implied in these provisions, but not stated. 165/

As America expanded, the desire for the land owned and occupied by the Indians became very great. Initially the hope was that the problem would solve itself: that as they became civilized their need for land would

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165/ One treaty did, however, include a reference to the language to be employed. This notable exception appears in the Treaty of May 6, 1828, with the Cherokee Nation. Article 5 reads in part: "It is further agreed by the U. S. to pay $1,000...towards the purchase of a Printing Press and Types to aid towards the Cherokees in the progress of education, and to benefit and enlighten them as people, in their own language." (emphasis supplied) naturally decrease. 166/ Educational policy was seen as a means to civilize the Indian and, thus, permit the taking of his land. President Monroe, writing in 1817, stated: "The hunter or savage state requires a greater extent of territory to sustain it than is compatible with the progress and just claim of civilized life... and must yield to it." 167/

But the pressures were too great for any policy envisioning a slow, gradual weaning of the Indian from the land to run its course. At the initiative of President Andrew Jackson Congress adopted the Indian Removal Act of May 30, 1830, by which the Atlantic Gulf States and

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166/ "The Indians being the prior occupants, possess the right of the soil. It cannot be taken from them unless by their consent, or by rights of conquest in case of a just war. To dispossess them on any other principle would be a great violation of the fundamental laws of nature." Statement of Henry Knox quoted in D. McNickle, The Indian Tribes of the United States: Ethnic and Cultural Survival 32 (1962) See also Johnson v. MacIntosh 21 U.S. (8 Wheat.) 543 (1823); Cherokee Nation v. Georgia 30 U.S (5 Pet.) 1 (1831) and Worcester v. Georgia 31 U.S. (6 Pet.) 515 (1832).

167/ Quoted in Sen. Special Subcommittee on Indian Education of the Committee on Labor and Public Welfare, Indian Education: A National Tragedy - A National Challenge, 91st Cong., 1st Sess., 143 (1969) (hereinafter cited as Indian Education).

Great Lakes tribes were forcibly removed west of the Mississippi River. This provided a temporary respite, but by mid-century the expansion westward once again conflicted with Indian occupation of land.

In response to the demand for more land, the Homestead Act was passed in 1862, which opened up the Plains to the white settlers. To facilitate the process, "encouragement was given to the slaughter of big buffalo herds, the Indians' principal source of food. With their meat gone, it was believed the tribes would be forced onto the reservations by the promise of rations." 168/

English language in the Indian schools was first mentioned in the report of the Indian Peace Commission, a body appointed under an act of Congress in 1867 to make recommendations for the permanent removal of the causes of Indian hostility. Its report of 1868, motivated by a combination of humanitarianism, militarism and expansionism, states:

> ...in the difference of language today lies two-thirds of our trouble. Schools should be established which children should be required to attend; their barbarous dialects would be blotted out and the English language substituted. 169/

168/ A. Josephy, Jr., The Indian Heritage of America 339 (1947).

169/ Supt. of Indian Schools, Sixth Ann. Rep. 10 (1887).

The Commission report sparked a heated controversy on the use of English in the schools. Most of the religious organizations supported the bilingual policy in opposition to the government, which as a result of the report required all school instruction to be in English. President Grant in 1870 harshly criticized the practices of the missionaries, denouncing their insistence on using native dialects in their schools. 170/ In 1879, two missionary societies were threatened with the withdrawal of Federal aid unless they complied with government regulations. The missionaries won a minor victory when, in 1888, the use of the Bible in the Indian tongue was approved for those schools in which religious organizations assisted. 171/

The Appropriation Act for 1871 contained a rider, declaring: "Hereafter, no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent tribe or power with whom the United States may contract by treaty." 172/ After the treaty period came to an end in 1871, government schools conducted exclusively in English began to be established, gradually displacing the mission schools and their bilingual approach.

170/ E. Adams, American Indian Education 50 (1946) .

171/ Ibid .

172/ McNickle, op. cit. supra note 166, at 43 .

Significantly, these government schools also resulted in the elimination of many of the Indian schools which the tribes had begun to establish and run themselves. Some of these Indian-initiated programs were quite significant. Thus, by 1852 the Cherokee Indian tribe had a school system of 21 schools and 2 academies--1100 pupils--run by themselves. Other tribes, the Choctaws, Creeks and Seminoles, for example, also had begun to establish and operate their own schools. 173/

Initially day schools were established. Early in their development, however, this type of schools lost favor: assimilation was more difficult while the children were still subject to the influences of their reservations. In 1873, the Board of Indian Commissioners reported:

> It is well-nigh impossible to teach Indian children the English language when they spend twenty hours out of the twenty-four in the wigwam, using only their native tongue. The boarding school, on the contrary, takes the youth under constant care...and surrounds him by an English-speaking community... 174/

In 1879 the first off-reservation boarding school--the institution which was to dominate Indian education for the next 50 years--was established at Carlisle, Pennsylvania.

173/ Berry, The Education of American Indians, A Survey of the Literature, prepared for the Sen. Special Subcommittee on Indian Education of the Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 11 (1969).

174/ A. Fletcher, Indian Education and Civilization 167 (1888).

The purpose of this school became clear in the succeeding decades: to separate the Indian child from his reservation and family, strip him of his tribal lore and mores, emphasize industrial arts, and prepare him in such a way that he would never return to his people. 175/ Language became a critical element in this policy. English-language instruction and abandonment of the native language became complementary means to the end.

The language issue, which received little attention until the missionary controversy, now blossomed in almost every report concerned with Indian education. In 1881, the Board of Indian Commissioners, in their report to the President, said on this subject:

> The Policy adopted of teaching only English in the Government schools is eminently wise... we have already raised two generations of Indians by unwise theories of education...a better system is now in use, and we trust the time is not far distant when English books and the English language will be exclusively taught in Indian schools. 176/

The coercive elements in such a policy become more apparent later in their document:

> But so long as the American people now demand that Indians shall become white men

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175/ Indian Education 148.

176/ Supt. of Indian Schools, Sixth Ann. Rep. 10 (1887).

> within one generation...(they) must be compelled to adopt the English language, must be so placed that attendance at school shall be regular, and that vacation shall not be periods of retrogression, and must breathe the atmosphere of a civilized instead of a barbarous...community. 177/

By 1886, there did not exist an Indian pupil whose tuition and maintenance was paid for by the U. S. government who was permitted to study in any language other than English. 178/ Aside from the forced use of the English language, Indian dress and religious practices were prohibited in the schools, and all males were ordered to cut their hair short (although many Indians believed in the supernatural significance of long hair). Further Indian students were punished for speaking their own language. They remained in these schools for eight years under military discipline during which time the students were not allowed to see their parents.

The counterpart of the education policy whose objective was to dissolve the social organization of Indian life on the reservation was the Dawes Severalty Act of 1887, which was designed to dissolve the Indian land base. 179/ Pressures leading to such drastic legislative measures included the discovery of gold on the Pacific Coast and the Rocky Mountains which had an explosive effect on the population. Too, the promoters of the transcontinental railroads

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177/ Fletcher, op. cit. supra note 174, at 168.

178/ Id. at 170.

179/ Indian Education 149.

sought grants of land along their routes. Thus, the Dawes Severalty Act, which ushered in the Allotment period of Indian history, was passed. Its essential features were: (1) Tribal lands were to be divided and the President was authorized to assign or allot 160 acres to each Indian family head; (2) Each Indian would make his own selection, but if he failed or refused, a Government Agent would make the selection; (3) Title to the land was placed in trust for 25 year; (4) Citizenship was conferred upon all allottees and upon other Indians who abandoned their tribes and adopted "the habits of civilized life;" (5) Surplus tribal lands remaining after allotment might be sold to the U.S. 180/ The allotment law and subsequent statutes set up procedures which resulted in the transfer of some 90 million acres from Indian to White owners in the next forty-five years. 181/

The philosophical relationship between educational policy and land policy of this period is clear but there was a financial tie as well. The proceeds from the destruction of the Indian land based were to be used to pay the costs of taking Indian children from their homes and placing them in Federal boarding schools. 182/

180/ McNickle, op. cit. supra note 166, at 48-49.

181/ Id at 49.

182/ Indian Education 150-151; Blackfeet et. al. Nation v. U.S. 81 Ct. Cls. 101, 115, 140 (1935).

The Indians, like the Germans of the same period, resisted such attacks on their land, customs, and language. Many refused, for example, to send their children to school and students frequently burned the schools down. 183/ Congress, desiring to break the resistance, passed legislation in 1893--repealed the following year--authorizing the withholding of rations and money from any Indian family for an Indian child who shall not have attended school during the preceding year.

W. N. Hailman, Superintendent of Indian Schools in 1896, questioned the educational validity of the Government policy.

> ...the great majority of Indian teachers have labored under the delusion that they can hasten the acquisition of the English language on the part of the pupils by compulsory measures, visiting more or less severe penalties upon the unfortunate children who were caught in the use of the Indian speech...To throw contempt upon the child's vernacular...is so manifestly unreasonable and so pernicious in its perverting and destructive influence upon the child's heart-life that it is a wonder that it even should have been attempted by the philanthropic fervor of workers in Indian school 184/

But, except for the missionaries who continued to protest the English language emphasis in the Government-supported

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183/ Forbes, "Native Americans of California and Nevada (1968)," in Sen. Hearings before the Subcommittee on Indian Education of the Committee on Labor and Public Welfare 91st Cong., 1st Sess., at 75-76 (1969) .

184/ Supt. of Indian Schools, Ann. Rep. 8 (1898).

Indian schools, his was a solitary voice. The mission schools which remained still taught in a combination of English and native languages. As a result, at the request of various Indian tribes, contracts were made with the missions in 1905, the money being taken from treaty and trust (tribal) funds. This use of tribal funds was challenged as being contrary to the policy stated in the Appropriation Act of 1897, prohibiting an appropriation for education to be used by a sectarian school. The Supreme Court held, in 1908, that both treaty and trust funds to which the Indians could lay claim were not within the scope of the statute and could be used for the mission schools, the only bilingual schools for Indians. 185/

185/ Quick Bear v. Leupp 210 U.S. 50 (1908). Because of the emphasis in the text on bilingual versus exclusively English schools, the mission schools may appear to the reader to have been reasonably successful. Such was far from the case. "The net results of almost a hundred years of effort and the expenditure of hundreds of thousands of dollars for Indian education were a small number of poorly attended mission schools, a suspicious and disillusioned Indian population, and a few hundred products of missionary education, who, for the most part, had either returned to the blanket or were living as misfits among the Indian or white population." Quoted in Berry, op. cit. supra note 173, at 15. The drop-out rate in the mission schools today is far higher than that found in either the public schools or the BIA-sponsored schools.

The techniques employed at the Indian boarding schools of the government continued until they received widespread attention with the publication of the Meriam Report, prepared by the Brookings Institution at the request of the Secretary of Interior, in 1928. In its chapter on education, the report recommended a change in point of view. Although assimilation should continue to be the goal, the report stated that this could best be accomplished by strengthening the Indian social structure, not destroying it. The report stressed repeatedly the need for a relevant instructional curriculum based on the needs and background of the Indian students, and it deplored the failure of the schools to take into consideration or accommodate to the language of the Indian child. 186/

John Collier, who became Commissioner of Indian Affairs in 1933 (and remained twelve years in that position), attempted to carry out these recommendations of the Meriam study. The Bureau of Indian Affairs sought to employ a large number of Indians. The enactment of the Indian Reorganization Act of 1934 strengthened tribal self-government and an active interest in native languages re-emerged.

In keeping with this interest, the Indian Service Summer School, organized in 1936, at its first regular session offered classes in the Sioux and Navajo languages, and there

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186/ R. Meriam, The Problem of Indian Administration (1928), passim.

were also special demonstration classes in methods of meeting bilingual problems. 187/ The Bureau of Indian Affairs also initiated efforts at adult basic education during this period and published a few bilingual curriculum materials.

The period of cultural tolerance lasted only until the early 1940s. The lack of funds and a hostile Congressional attitude put an end to Collier's programs. Some Congressmen even complained that there were dangerous communistic tendencies inherent in Indian culture which must be eliminated. 188/

In 1944, the House Indian Affairs Committee made recommendations which called for a return to the very same policies which the Meriam report of 1928 discredited. It criticized, for example, a "tendency in many reservation day schools to adapt the education to the Indian and to his reservation way of life" 189/ and again called for the removal of young Indians from their homes and their placement in off-reservation boarding schools. By 1948, Congress had begun to cut funds for Indian education. 190/

187/ Adams, op. cit. supra note 170,at 91.

188/ S.L. Tyler, Indian Affairs: A Work Paper on Termination With an Attempt to Show Its Antecedents 22 (1964).

189/ House Select Committee to Investigate Indian Affairs and Conditions, Rep. 11 (1944).

190/ Indian Education 159.

Again the educational policies simply mirrored the current congressional attitudes toward the Indians: in this case the "Termination Period" of Indian history. By 1950 the goal was to get rid of Indian trust land by terminating Federal recognition and services and relocating Indians into cities. In 1953, Congress passed a law which transferred Federal jurisdiction over Indian reservations to individual states and House Concurrent Resolution 108 called for the end of Federal service to Indians--including education--in an attempt to hasten Indian assimilation. 191/

In the later years of the Eisenhower administration the emphasis on termination abated, and when the Kennedy Administration entered office, it conveyed to the Indians its desire for reversal of the termination policy. A special task force, appointed to investigate the status of Indian affairs, addressed itself to bilingualism in Indian education but did not provide a very strong case for it. 192/ It asked only that the BIA make a special effort to keep abreast of the

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191/ H.R. Con. Res. 108 (83rd Cong., 1st Sess.).

192/ Bilingualism in education, off-reservation boarding schools, and termination were not necessarily at odds although in practice they were seen that way. The most notable experiment in bilingual education in an off-reservation boarding school (which in practice was linked to relocation) was the special Navajo education program which began in 1946 at the Sherman Institute in Riverside, Calif., L.Coombs, Doorway Toward the Light (1962).

latest developments in language training and instruction and carry on in-service training programs in conjunction with local universities.

Two major pieces of legislation were passed in 1964 and 1965 which had important implications for Indian education: the Economic Opportunity Act 193/ and the Elementary and Secondary Education Act. 194/ The Elementary and Secondary Education Act made education a matter of national policy and priority for all disadvantaged youth. Additional monies were provided to the Bureau of Indian Affairs, and special innovation centers were set up to develop new educational methodologies for Indians. That something new was required was clear. The country's Indian educational policies were reflected in the following statistic: In the 1800's, the Cherokees had an educational system which produced a "population 90% literate in its native language and used bilingual materials to such an extent that Oklahoma Cherokees had a higher English literacy level than the white populations of either Texas or Arkansas;" today "40% of adult Cherokees are functionally illiterate." 195/

193/ Economic Opportunity Act of 1964. Public Law 88-452, 78 Stat. 508.

194/ Elementary and Secondary Education Act of 1965. Public Law 89-10, 79 Stat. 27.

195/ Indian Education 19. The point in the text is well taken. However, it should be noted that the Cherokees were far from typical. They were the only tribe which had developed a written language.

The Economic Opportunity Act provided for a number of programs which benefitted Indian education such as Headstart, Upward Bound, VISTA, and most significantly the Indian Community Action Programs which resulted in schools coming increasingly under Indian control. For example, the Rough Rock School in Arizona is run by an all-Navajo school board, and weekly school board meetings are conducted in Navajo. Two of the school's operating concepts have special significance for this essay: (1) English must be taught as a second language to Indian children, but it must not be regarded as something they should learn immediately through mere exposure; and (2) the schools should help transmit to the young the culture of their parents. 196/

The culmination of these activities was President Lyndon Johnson's Message on Indian Affairs delivered to Congress on March 6, 1968. The statement placed the highest priority on the improvement of education for Indians and the control of Indian schools by Indian school boards. It also stressed

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196/ Indian Education 177. For some pertinant questioning of the effectiveness of the Rough Rock experiment see Coombs, "A Summary of Pertinant Research in Bilingual Education" in Univ. of Alaska, Rep. of Conference on Bilingual-Bicultural Education for Alaska Native Youth 32-38 (1969). Statistical data collection on language ability of six year-old Navajos has begun. Spolsky, "Navajo Language Maintenance: Six Year Olds in 1969" in Univ. of N. Mex., Navajo Reading Study (1970).

the use of Indian native language as the language of instruction.

> These schools will have the finest teachers, familiar with Indian history, culture, and language--feature an enriched curriculum...a sound program to teach English as a second language. 197/

197/ H.R. Doc. 272 (90th Cong., 2nd Sess.) at 5. President Nixon's message on Indian Affairs, the most liberal statement of Indian policy ever made, although it stressed Indian education and its control by Indians, did not mention the subject of language. Message from the President of the United States transmitting Indian Policy. H.R. Doc. No. 91-363 (91st Cong., 2nd Sess.).

PUERTO RICANS

We have discussed above the historical and political record of the use of English as the language of instruction in connection with various ethnic groups in the United States. They were either citizens of the United States and, therefore, legally entitled to treatment similar to other United States citizens, or aliens--a group whose Constitutional position vis-a-vis the Federal and local government was again at least in theory no different from other aliens. We shall in this section of the essay trace the United States Government's language policy toward Puerto Rico, a territory whose residents did not have the same status as the ethnic groups discussed above. Here the role of conqueror and conquered was explicit and the act of imposition did not have to be masked or softened in any way. What is interesting to note is that the policy followed in essence was the same used by the Federal Government toward groups that did not have a colonial status but were outside the conventional image of an American at the time. In short, the language issue as it arose in the United States proper was framed and operated in the same way as when it was framed and formulated by a government dealing with a colonial people.

At the outset the Federal government did not regard the problem of language in Puerto Rico as a particularly difficult one. There were sharp differences of opinion with respect to the speed with which English would be introduced into the Island, depending to a degree on how the long-range future was envisioned. 198/ But it was assumed, since education under the Spanish was limited to a small elite and many in Puerto Rico were eager to come under the United States flag and become a state, that English would rather easily become the recognized or coequal language of the island. Thus, Dr. Victor Clark, who assisted Dr. John Eton in the first survey of educational conditions in Puerto Rico in January 1899, stated initially:

198/ There were three investigative reports on conditions in Puerto Rico within the first two years: H. Carroll Rep. on the Island of Porto Rico (1899); Insular Commission, Rep. to Secretary of War (1899); and Gen. Geo. Davis (Rep. on Civil Affairs of Puerto Rico (1899). Each of these directed its attention to the question of the introduction of English into Puerto Rico and took differing views on it. Dr. Henry Carroll, an active Protestant church layman, appointed by President McKinley to conduct a general survey of the Island under the supervision of the Treasury Department, urged full territorial government with retention of Spanish laws. The Insular Commission of three men called for immediate, radical reforms, recommending that all Spanish laws be abrogated and replaced by U. S. common and federal law with education in English under American teachers. General Davis argued for a gradual adaptation of Spanish law codes to the American system comparable to the situation in Guiana, Quebec, and Louisiana. See also Comm. to Revise and Compile the Law of Porto Rico, Rep. (1901) headed by L. S. Rowe.

> There does not seem to be among the masses the same devotion to their native tongue or to any national ideal that animate the Frenchman, for instance, in Canada or the Rhine provinces. Another important fact that must not be overlooked is that a majority of the people of this island do not speak pure Spanish. The language is a patois almost unintelligible to the natives of Barcelona and Madrid. It possesses no literature and has little value as an intellectual medium. There is a bare possibility that it will be nearly as easy to educate this people out of their patois into English as it will be to educate them into the elegant tongue of Castille. 199/

The United States was aware of the need initially to make obeisance to the Spanish customs and language that were present in Puerto Rico. But the long-range view was that in time "the laws and language of the mainland and the

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199/ P. Cebollero, A School Language Policy for Puerto Rico 6-7 (1945). Dr. Clark modified this position shortly afterwards and requested a study of the two languages.

> The justification for the study of the two languages (Spanish and English) lies in the fact that one is the mother tongue of the great majority of the pupils of this island and is doubtless destined to be the household tongue of the people for many years to come. To exclude its study (the study of Spanish) is to allow it to degenerate into a vulgar and ungrammatical patois, which, while it would not loosen its tenacious hold upon popular sympathy, would cease to be an active force in the culture and enlightenment of the people. V. Clark, Teachers' Manual for the Public Schools of Porto Rico 70 (1900)

island [would be] uniform." 200/ With this attitude prevailing, the issue of whether English was to be the language of instruction did not appear at this point as significant, and no clear demarcation was made between English as the language of instruction and other methods to initiate the populace into English.

The first Commissioner of Education for Puerto Rico, Dr. Martin Brumbaugh, adopted a policy of "conservation of Spanish and the acquisition of English." Both Spanish and English were to be taught as subjects beginning in the first grade in elementary school. The language of instruction in the primary grades was to be Spanish but the language of instruction in the high schools was to be English. Enthusiasm was high; teachers were to be brought from the States 201/ and the educational effort in Puerto Rico substantially increased. Almost immediately problems arose, and in early 1903 teachers of English were complaining that the teaching of English as a subject without the requirement that it be the language of instruction was not producing results quickly enough. With the political issue of ultimate status relatively dormant at this time, the

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200/ Governor of Puerto Rico, Fourth Ann. Rep. 13 (1904).

201/ American teachers never did number more than one-tenth of the teaching force and after 1910 the percentage declined nearly to the vanishing point. W. Perkins, Denial of Empire 123 (1962).

requirement of English as the language of institution was argued on educational grounds. The second Commissioner of Education, Samuel Lindsay, stated in his report of that year to the Governor of the Island: "It is the intention of the Department to have the schools entirely upon an English basis just as soon as pupils and teachers can be trained sufficiently in the use of the English language to make it the official language of the schoolroom." 202/ This policy of English as the language of instruction in all grades was then initiated in 1905 by Commissioner of Education Roland Falkner.

Increasingly the need to amend the Foraker Act of 1900--which by its own terms was temporary in character--became clear, and beginning in 1909 a series of bills was introduced and reported out of one or the other house of the Congress suggesting changes in the initial Organic Act. Many of these responded to strong Puerto Rican urgings; others were more closely related to perceived continental interests. The debate and the nature of these changes raised serious questions about both the long-range and current character of the United States-Puerto Rico relationship. In Puerto Rico the issues provided the basis for the establishment of what were to become the classic status positions (independence, statehood, and some kind of dominion status). The major issue was the

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202/ Comm. of Ed., Report 21 (1903).

acquisition of U. S. citizenship, which independence partisans opposed. The issue of English as the language of instruction also became a symbol around which various status proponents in Puerto Rico argued their case. Strong nationalists arguing for either complete separation or autonomy, protested against the use of English as the language of instruction while those who urged closer association and statehood strongly supported the cause of English as the language of instruction. In 1917 Congress enacted the Jones Act granting citizenship to the people of Puerto Rico and permitting greater local self-government. Statehood was explicitly not pledged by the Congress in the granting of citizenship.

Coincidentally, in 1916, Commissioner Paul Miller adopted a third language policy for Puerto Rico. It was to remain in force until 1934 and softened the requirement that English be the exclusive language of instruction in the school system. Although this new policy was adopted in part because of the practical difficulty of obtaining American teachers, it is interesting to note that the weakening of English language instruction took place at the same time that the United States became openly less certain of Puerto Rico's ultimate future. A similar uncertainty was developing in Puerto Rico. With statehood viewed by some as impossible of attainment, local political parties on the island became strongly divided as to the desired goal.

Under the Miller policy, Spanish became the language of instruction for the four lower grades of the elementary school; both Spanish and English were used in the fifth grade, and English alone was used as the medium of instruction in the three upper grades. English remained the language of instruction in the secondary schools. 203/

However, educators in Puerto Rico, faced with the difficulty of instructing the children of an almost illiterate populace in a language not their own, thrashed about uncertainly seeking the way to balance educational requirements within a political situation whose objective was undefined.

Two major surveys in the 1920's highlighted the problems. In 1925 the Teachers' College of Columbia University surveyed the public educational system of Puerto Rico. This survey, which examined carefully the literacy achievements in both English and Spanish, by grade, recommended that instruction in the subject of English be postponed until the fourth grade and that English not be utilized as the medium of instruction until the seventh grade. 204/ In addition, the survey felt it necessary to address itself to the question of whether English was being imposed as the medium of instruction or whether it was being adopted willingly.

It stated as follows:

203/ Comm. of Ed., Rep. to Gov. of P.R. 464 (1917).

204/ Int'l Inst. of Col. Teachers' College, A Survey of the Public Educational System of Porto Rico 30-31, 105 (1926).

> Teaching all pupils a second language in addition to the work done by schools of similar grade on the continent enormously increases the task of the school system of Puerto Rico. Other countries have undertaken a similar task; some for the accomplishment of nationalistic ends; some because of the lack of a common means of communication; others because the population already was speaking two languages. *The situation in Puerto Rico is unique in that none of these pressures is operative; a speaking knowledge of English is desired by Puerto Ricans in addition to Spanish because of the social and economic advantage which it gives. The schools are teaching English not to compel unwilling people to accept a new idiom, but because Puerto Ricans wish to learn and to have their children learn to speak and read English.* Because the area of opportunity for the products of the Puerto Rican school system is nation-wide, in this sense the aim of the Puerto Rican schools is not less than that of the entire American school system. Political, social, economic expediency makes it desirable that large numbers of Puerto Ricans, ultimately all of them, should be given a thorough knowledge of English. Thus, will they become in time thoroughly merged into the social structure of the great Republic, with all its social and economic advantages. But this result can and should be accomplished without decreasing their knowledge of Spanish culture or their ability to use their native language. Several European peoples are bilingual. That part of the American people that possess this skill will possess a great advantage. 205/ (emphasis supplied)

The Report of the Commissioner for the following year rejected the Teachers' College Survey recommendations that

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205/ *Id.* at 29-30.

instruction in the English language and in the subject be put off three years. In discussing this issue it addressed itself to the political aspects of the relationship.

> The aim of the school, besides that of preparing children for life, has been the 'acquisition of English and the conservation of Spanish.' This aim is fully in harmony with the racial traits of the Puerto Ricans and with their political relationship with America. Whether we should begin the teaching of English in the first grade or in a higher grade and how should we teach it, has been a question of discussion and experimentation for many years. What we have now is the result of twenty-five years of devotion to the cause of education and experience in teaching Porto Rican children. 206/ (emphasis supplied)

In the fall of 1928 the Brookings Institute of Washington, D. C. undertook a study of the social and economic problems of Puerto Rico, headed by Dr. Victor Clark, former Director of Education under the military government from 1898 to 1900. One chapter of its report was dedicated to education. It disagreed with the Columbia Teachers' College survey which had suggested eliminating the teaching of English in the first three grades of the elementary school and it did so on openly political grounds.

> The members of the present Survey incline to the opinion that the teaching of English in the elementary grades should be continued. While the large amount of time given to the study of language tends to perpetuate the mechanical routine that characterized the Spanish schools before the American occupation and that still deadens class work in many mainland institutions,

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206/ Comm. of Ed., Unpub. Rep. (1926), cited in J. Osuna, A History of Education in Puerto Rico, 60 (1949).

on the other hand, an opportunity to learn English, no matter how imperfectly and inadequately, is one of the magnets that draws the children of the poorer classes to the public schools. To tens of thousands of the disinherited in Puerto Rico a knowledge of that language seems to promise,--perhaps fallaciously--a better economic future. Popular willingness to make sacrifices for the schools is in some degree due to this pathetic faith. To take English away from the primary grades and confine it to the more advanced courses attended only by the minority, would add one more exclusive privilege to the many already enjoyed by the well-to-do. In a country with Puerto Rico's traditions this is of great practical moment.

Moreover, English is the chief source, practically the only source, of democratic ideas in Puerto Rico. There may be little that they learn to remember, but the English school reader itself provides a body of ideas and concepts which are not to be had in any other way. It is also the only means which these people have of communication with and understanding of the country of which they are now a part. The utility of instruction in English and indeed of education generally has been severely limited by the almost complete lack of books and periodicals among the common people of the Island. The seed sown by an elementary education, such as that now offered in Puerto Rico, can hardly be expected to germinate and fructify into an improving citizenship in a soil devoid of reading matter.

In the light of these various considerations, it is our conclusion that the Puerto Rican Department of Education, in refusing to follow the recommendations of the Educational Survey Commission, acted with a true instinct. In spite of the fact that the mass of the people can make little use of the very poor English they acquire in the present-day schools of the country, as a long-run matter,

> we believe that a discontinuance of English training in the early grades would be a step backward. It might be wise, however, to direct this instruction to the specific object of helping pupils who might eventually find employment on the mainland to qualify for work in an English-speaking country. 207/ (emphasis supplied)

In 1930 Dr. Jose Padin, a long-time official in the Puerto Rico Department of Education, was appointed Commissioner of Education. His study, fifteen years before 208/, had been the first examination of the issue of English as the Language of instruction since the U. S. conquest of Puerto Rico. It had led to the abandonment of the Falkner Policy of English as the exclusive language of instruction in the school system and the introduction of the Miller Policy of Spanish as the language of instruction in lower grades. In 1934 he further limited the use of English as the language of instruction by establishing Spanish as the sole medium of instruction in grades one through eight, continuing English as the medium of instruction in grades nine through twelve. Dr. Padin came to the issue in strictly educational terms, omitting the problems of political allegiance or democratic ideals. He discussed in detail the educational difficulties students experienced in other subjects when taught in English. He

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207/ Id. at 363.

208/ Padin, "The Problem of Teaching English to the People of Puerto Rico" Dept. of Ed., Bull. No. 1 (1916).

especially noted the problems of teaching arithmetic in English and argued strongly that using English as the medium of instruction hampered acquisition of English by the students in addition to having a deleterious effect on the acquisition of other subjects.

> The acquisition of English has been handicapped heretofore by its use as the medium of instruction at levels where such unwarranted employment produced negative results both in the instruction of the pupils and in the acquisition of English. It has been further handicapped by inadequate teaching, inadequate methods and inadequate content. We propose to teach more and better English by entrusting the teaching to the most competent instructors and by determining scientifically the best method and content to achieve the object. And with that I rest my case. I do not ask for endorsement in advance. I do not need it. I do ask the unprejudiced and responsible members of the community to give the experiment its day in court and to view the results with an open mind. 209/

It is interesting to note that at this point there was still no argument about the desirability of the acquisition of English in Puerto Rico. The issue was becoming increasingly focused upon English as the medium of instruction.

Padin followed his policy revision by obtaining the services of two prominent consultants, Dr. William Grey in the Spring of 1936 and Dr. Michael West in the summer of that same

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209/ Padin, English in Puerto Rico 5-8 (1934) year. Their surveys supported the Commissioner. Dr. Grey stated as follows:

> 1. The major change adopted at the beginning of the school year 1934-35--that is, the change from English to Spanish as the sole medium of instruction in the first eight grades of the urban and rural schools--represents a significant step in the right direction.
>
> 2. The new program recognizes fully the value of English in Puerto Rico under existing conditions.
>
> 3. The revised program has been so organized as to secure the largest contribution to child development which both Spanish and English have to offer at present.
>
> 4. As judged by the standards adopted by experts in the field of bilingualism and the teaching of foreign languages, the adopted program is conservative in the amount of emphasis given to the vernacular and liberal in the amount given to English.
>
> 5. The relative emphasis given to Spanish and English should be studied intensively from time to time and such changes adopted as are clearly justified by social and educational needs. [210]

Dr. West's Survey said:

> 1. There is no essentially bilingual problem in Puerto Rico, in the sense in which this term is used in Wales, South Africa, etc. In fact, the only bilingual problem in the Island exists among the American residents.
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> 2. There is in Puerto Rico a unilingual people who have a certain need of English, as have the French and many other peoples. The extent of this need and the best method of fulfilling it has unfortunately been made a political issue. As a

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[210] Osuna, op. cit. supra, note 206, at 372.

> result, the development of a language policy has been blocked; the system of English teaching in the schools has got out of date and out of touch with the facts of the present day.
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> 3. There is need of a diffusion of ability to read and understand English, so that the contact may be maintained with American culture and ideas. . . .
>
> 4. Learning in the school subjects is considerably impeded by the use of textbooks in English. It is doubtful whether the pupil's gain in English reading ability is commensurate to the loss in learning in the subject. 211/

Although the Padin policy was basically a return to that initially established by Commissioner Brumbaugh, the fact that this was being done at this juncture by the first Puerto Rican Commissioner of Education made the matter extremely difficult. For the issue had ceased to be, if it ever was, a question of the best way to learn English. The rise of the militant Puerto Rican Nationalist Party and the strong advocacy in Puerto Rico of independence converted the question of whether Puerto Rico would accept the imposition of English as the language of instruction to one of sovereign prerogative.

The Nationalist Party of Puerto Rico was founded originally in 1922 primarily by intellectuals interested in propagating the idea of national sovereignty for the Island. By 1930, when Albizu Campos assumed the presidency of the Party and many of the moderate Nationalists had joined the newly created Liberal party which also stood for independence,

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211/ Id. at 374-375.

the Nationalist Party was openly advocating revolution. The terrible effect of the early depression years on Puerto Rico, the incompetence and ignorance of the Federally-appointed governors during this same period, and a series of openly disruptive and violent acts by the Nationalists, rapidly brought matters to a head. 212/

In February 1936 the Island's police chief, Col. Ernest Riggs, was assassinated; later that same year an attempt was made on the life of the Resident Commissioner, Santiago Iglesias, and in 1938 on Governor Blanton Winship. But perhaps the most far-reaching event was the Ponce massacre on Palm Sunday, March 1937. The insular police force attempted to prevent a Nationalist parade, gun-fire broke out, and before order was restored, nineteen persons were killed and approximately one hundred others wounded.

The effect of these and other terrorist acts was rapid. Senator Millard Tydings, prompted by the killing of his close friend, Col. Riggs, and with the covert assistance of the

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212/ Brief useful histories of Puerto Rico emphasizing the U.S.-Puerto Rico relationship from which the historical material in the text here and elsewhere in this chapter was drawn are W. Perkins, Denial of Empire 110-165 (1962), and R. Hunter, Puerto Rico, A Survey of Historical, Economic and Political Affairs (House Comm. on Interior and Insular Affairs 1959).

Administration, introduced a bill in 1936 providing for independence for Puerto Rico without provision for economic transition. The bill, perhaps, had its desired effect, for the Liberal party, advocating independence, suffered a severe defeat in that year.

The effect on the language issue was also clear. Senator King of Utah, head of the Senate Committee on Insular Affairs, visited Puerto Rico in 1936 to conduct an investigation. He correlated the anti-American feeling with the ignorance of English in the local populace; and, on his return to Washington, he began to press for English as the language of instruction in the school system. His stance led to Dr. Padin's resignation that same year.

In 1937 a new Commission, Dr. Jose Gallardo, was appointed and now for the first time the Administration in Washington spoke openly on the language question. The President himself addressed the problem.

> I desire at this time to make clear the attitude of my administration on the extremely important matter of teaching English in Puerto Rico. Puerto Rico came under the American flag 38 years ago. Nearly 20 years ago Congress extended American citizenship to Puerto Ricans. It is regrettable that today hundreds of thousands of Puerto Ricans have little and often virtually no knowledge of the English language. Moreover, even among those who have had the opportunity to study English in the public schools, mastery of the language is far from satisfactory. It is an indispensable part of American policy that the coming generation of American citizens in Puerto Rico grow up with complete facility in the English tongue. It is the language of our Nation. Only through the acquisition of this language will Puerto Rico -

> Americans secure a better understanding of American ideals and principles. Moreover, it is only through thorough familiarity with our language that the Puerto Ricans will be able to take full advantage of the economic opportunities which became available to them when they were made American citizens. . . .
>
> Clearly there is no desire or purpose to diminish the enjoyment or the usefulness of the rich Spanish cultural legacy of the people of Puerto Rico. What is necessary, however, is that the American citizens of Puerto Rico should profit from their unique geographical situation and the unique historical circumstance which has brought to them the blessings of American citizenship by becoming bilingual. But bilingualism will be achieved by the forthcoming generation of Puerto Ricans only if the teaching of English throughout the insular educational system is entered into at once with vigor, purposefulness and devotion, and with the understanding that English is the official language of our country. 213/

Although the President did not address himself specifically to the question of whether English should be the language of instruction, by stating bilingualism as a goal he implied that the language of instruction could be English as well as Spanish and, as we shall see, that the movement should be toward the former. Dr. Gallardo read the message similarly. Upon assuming office he moved to initiate English as the language of instruction in the third and fourth grades about one-third of the time, in the fifth and sixth grades about one-half the time, in addition to the

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213/ The Public Papers and Addresses of Franklin D. Rossevelt, 1937 Volume, The Constitution Prevails 160 (1941).

teaching of English as a subject. In the seventh and eighth grades two-thirds of the instruction was to be in English, resulting in the subject matter being taught in English on Monday, Wednesday and Friday, and in Spanish on Tuesday and Thursday. 214/

This policy did not work out well as might have been expected and gradually English was used less and less as the language of instruction. By the end of the school year 1941-42, language juggling came to an end. In Circular Letter No. 1, dated July 1, 1942, Commissioner Gallardo required English to be taught as a subject from the first through the sixth grades of the elementary schools. Spanish then became the only language of instruction in the elementary grades. Thus, at the end of five years, for practical purposes the Commissioner had reverted to the policy of his predecessor.

This policy change became an issue that same year when a subcommittee of the Senate, headed by Senator Chavez, went to Puerto Rico to look into the Administration of the government and there, quite incidentally, got into the subject of education and English.

> Senator Bone: In regard to teaching English in the schools, this should be a bilingual group that you have in this Island. I found it difficult to make myself understood. I am wondering how far English is taught in the schools. The United States Government

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214/ Comm. of Ed., Ann. Rep. 16 (1937-1938).

has been here for 45 years and it has not made much progress. Don't they teach English?

Dr. Gallardo: We make efforts to teach English. We teach it through the elementary schools and in the high schools. However, the only opportunities for the use of English afforded to a child in Puerto Rico are exclusively those of the school. Teaching English is seriously handicapped by the environment, which is Spanish. The biggest mistake made by anyone is to think that we can achieve true bilingualism. In Puerto Rico it is impossible to obtain a situation where our people will master both languages well. (emphasis supplied)

(At this point Senator Taft introduced the letter from President Roosevelt to Dr. Gallardo)

Senator Taft: You think bilingualism is impossible of achievement?

Dr. Gallardo: Yes. I am referring to absolute bilingualism, which implies that all the population should master both languages on the basis of equality....

Senator Taft: The real issue is whether the subjects, as I understand it, shall be taught in English and it is not a question of whether English shall be taught.

Dr. Gallardo: There is quite a dispute in Puerto Rico about that. I would say that there is nobody in Puerto Rico against the teaching of English but there is quite an argument as to the best method or procedure....We teach content in Spanish and we teach English as a preferred subject in the six year elementary school; from the seventh grade on, the subject matter is studied in English and Spanish is studied as a preferred subject.

Sen. Brewster: What percentage of the children go beyond the sixth grade?

> Dr. Gallardo: of the 300,000 in school now, 55,000 go beyond the sixth grade....
>
> ...My honest opinion is that if you want to make the people of Puerto Rico really bilingual you should have at least one-half of the population native English speaking so that you can have equality of opportunity for the use of both languages. 215/

Gallardo's testimony brought an immediate rebuke from Harold Ickes, the Secretary of the Interior:

> I have before me a transcript of your testimony before the Chavez subcommittee on the question of the schools in Puerto Rico with reference to the teaching of English.
>
> I say with regret that the evidence that you gave fails to impress me that there has been assiduity on your part in carrying out my distinct understanding with you on the subject of teaching English. Moreover, you seem to have paid little attention to the specific instructions from the President. 216/

215/ Hearings of the Senate Subcommittee Investigating Economic and Social Conditions in Puerto Rico 78th Cong., 1st Sess., Pt I, 230-231 (1943). Similar colloquies were held by the members of the Committee and Lewis C. Richardson and Pedro A. Cebollero, representatives of the Teachers Association, Id. at 273-290. See also Dr. Gallardo's testimony to the same effect before the Bell Committee. Hearings of the House Committee Investigating Political, Economic and Social Conditions in Puerto Rico 78th Cong., 1st Sess., 734-735 (1943).

216/ Osuna, op. cit. supra note 206, at 382.

When this letter from Secretary Ickes resulted in Commissioner Gallardo's offer to resign, the Secretary followed this with another letter in which it became clear that bilingualism with a euphemism for the use of English as the language of instruction in the school system. Noting that he, Secretary Ickes, had written to the Editor of the San Jun Star on the question of Spanish as the language of instruction in the primary grades and English in the later grades as of 1937, he then went on to state as follows:

> There has been no change in the policy since that year.
>
> My disappointment in your testimony before the Chavez Subcommittee stems from my own pride in and hope for Puerto Rican achievement....
>
> ....My own opinion is that practical bilingualism is desirable and can be achieved.... 217/

In the early '40's the need to make major changes in United-States-Puerto Rico relations became increasingly clear. A joint executive committee, headed by Under Secretary of Interior Abe Fortas and Luis Munoz Marin of Puerto Rico, met in 1944 to recommend changes in the federal organic legislation, and Senator Tydings introduced bills in 1943 and again in 1945 providing for independence. Increasingly the idea of a plebiscite on varying status alternatives--dominion status, statehood, and independence--grew in acceptability. 218/

217/ Id. at 390-391.

218/ 80th Cong. Rec. 1563 (1943).

The language issue similarly grew more heated. In 1946 the Puerto Rican Legislature took the matter in hand and passed a bill providing that Spanish should be the language of instruction in the public schools and that the teaching of English as a subject should also be compulsory in all the public schools. The bill was vetoed by Acting Governor Manuel A. Perez, an Executive Branch appointee, and was later passed over his veto. The bill, under the procedure then operative, then went to the President, who similarly vetoed the bill:

> My reasons for disapproving the Bill are similar to those expressed by the Acting Governor in his veto message and by Governor Tugwell in his letter transmitting the Bill to me. I have not considered the merits of the pedagogical program which the bill would introduce into the insular public school system. I base my disapproval, instead, on the untimeliness of the measure and my feeling that the issue of Puerto Rican political status would be confused and its solution delayed by the adoption just now of a new language policy. Important as the language question may be, I regard the reaching of a permanent and satisfactory solution to political status as of greater importance, and I cannot permit a measure to stand which, in my opinion, would jeopardize that solution. 219/

After a year and a half search for a new Commissioner, in December of 1946 President Truman appointed Mr. Mariano Villaronga, a member of the faculty of the University of Puerto Rico. Before his appointment the new Commissioner felt compelled to publicly inform the President about his English policy.

219/ Public Papers of the Presidents of the United States, Harry S. Truman, 1946 Volume 466 (1962).

> Our increased knowledge and use of English will greatly enhance the possibilities of developing stable and constructive relationships between Puerto Rico and the Continental United States... These facts clearly demonstrate that, for maximum results, English should be taught at all levels of our school system. However, for such teaching to be effective, English should be considered as a school subject and not as the medium for teaching all other subjects. 220/

The Senate Committee on Territories and Insular Possessions withheld his confirmation because of these views on the teaching of English, and Commissioner Villaronga withdrew on June 30, 1947. 221/ But the issue had been joined and there was no relenting. In 1948 Puerto Rico obtained the right to elect its own Governor (prior to that time Governors were appointed by the President) and Luis Munoz Marin, the first elected Governor of Puerto Rico, reappointed Commissioner Villaronga on January 3, 1949. In a Circular Letter sent to all school districts of that year, Villaronga said:

> Spanish will be the vehicle of instruction in the high school. This change, which responds to

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220/ Puerto Rico, Bulletin of Wash. Office (Nov. 15, 1946).

221/ Bou, "Significant Factors in the Development of Education in Puerto Rico" in U.S.-Puerto Rico Commission on the Status of Puerto Rico, Selected Background Studies 168 (1966).

> a long-felt need, extends definitely the use of the vernacular as the teaching means until the last year of high school. 222/

English at first was a preferred subject but gradually, over time, it acquired the same status as any other principal subject in the curriculum. 223/ Although the issue of language policy explicitly imposed from without is now over, the issue of the role of English in the school system still has status and political overtones in Puerto Rico. 224/ In recent years, since the election in 1968 of Governor Luis Ferre, an avowed "statehooder", there has been a renewed interest in English. 225/ Limited funds and personnel have hampered its strong reactivation. 226/

222/ Id. at 168.

223/ Hull, "The English Problem" in San Juan Review (June 1965).

224/ "SJR Interviews the Secretary of Education" in San Juan Review (June 1965).

225/ San Juan Star, Jan. 13, 1969, p.28-29; San Juan Star, April 2, 1969, p.6.

226/ Feigenbaum, "English Said Limited by Funds Lack," San Juan Star, Sept. 18, 1970, p. 3.

BILINGUAL EDUCATION ACT

By 1967 when the Federal government for the first time, by its passage of the Bilingual Education Act, suggested the permissibility--even the desirability--of instruction in the native language, the political context had substantially changed. The Executive and Legislative Branches had both come out rather strongly for civil rights and focused on the deprivations suffered by various minority groups. The wave of ethnic nationalism which accompanied the civil rights movement and social changes in the '60's no longer required Spanish-speaking parents to remain mute or to soften their desire that the Spanish language be given a more meaningful role in their children's education.

The 1960 Census 227/ counted the Spanish-surnamed population in the five Southwestern states of Arizona, California, Colorado, New Mexico and Texas, and the figures were indeed significant. The total Spanish-surnamed population had increased more than 50 percent over the 1950 totals: to 3,464,999 from 2,281,710. The 1960 figures from Texas

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227/ The 1930 Census identified "Mexicans" (persons of Spanish colonial descent) as a racial classification. In 1940, on the basis of a five percent sample, the Census counted persons speaking Spanish as the mother tongue. The 1950 and 1960 Censuses, on the basis of a 20 percent and 25 percent sample respectively, identified the Spanish-surnamed populace in the five Southwestern states. These states had accounted for more than 80 percent of all persons with Spanish as the mother tongue.

showed that the Spanish-surnamed population was 1,417,810 out of a total population of 9.5 million people, or almost 15 percent of that total. California had the largest Spanish-surnamed population, 1,426,538, a figure which showed a 87.6 percent increase over 1950.

In the other Southwestern states (Arizona, New Mexico, and Colorado) the Spanish-surnamed population was also identified and was in all cases approximately 10 percent or more. 228/ On the East Coast, although not as numerically significant, there was a large number of Puerto Ricans--over 600,000 in New York City and, by 1966, almost 21% of the total public school population of that city 229/--for whom Spanish was the native tongue.

The Federal government and the individual states had begun to respond to this increased constituency. For example, in 1965 the Federal government established the Interagency

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228/ The precise figures as of 1960 for these latter three states are: Arizona: 194,356 Spanish-surnamed out of a total population of 1,302,161; New Mexico: 269,122 out of a total population of 951,023; and Colorado: 157,173 out of a total population of 1,753,050.

229/ Hearings before the Sen. Special Subcommittee on Bilingual Education of the Committee on Labor and Public Welfare 90th Cong., 1st Sess., 75 (1967) (Hereinafter cited as Sen. Hearings, Bilingual Education).

Committee on Mexican-American Affairs 230/ to concern itself with Mexican-American issues, and on July 1, 1967, a Mexican Affairs Unit began to function within the United States Office of Education. Within the next few years the Equal Employment Opportunity Commission published its first study of Mexican-Americans, Spanish-Surnamed American Employment in the Southwest, the U. S. Civil Rights Commission held its first hearings on Mexican-Americans and published its first report "Mexican-Americans and the Administration of Justice in the Southwest," and the Congress in the Voting Rights Act of 1965 permitted the suspension of literacy tests as a condition of voting where past performance indicated discriminatory administration of the test 231/ or where the voter had completed the sixth grade in an American school where the language of instruction was other than English. 232/ In extending the Act five years later, Congress in 1970 suspended literacy test altogether. 233/

230/ The Nixon Administration expanded its jurisdiction and renamed it the Cabinet Committee on Opportunity for the Spanish-Speaking.

231/ Upheld by the Supreme Court in South Carolina v. Katzenbach 383 U.S. 301 (1966).

232/ For practical purposes only those students who studied in Puerto Rico were affected. The provision was upheld by the Supreme Court in Katzenbach v. Morgan 384 U.S. 641 (1966) rev'g 247 F Supp. 196 (D.D.C. 1965). See also U.S. v. County Board of Elections 248 F. Supp. 316 (W.D.N.Y. 1965).

233/ This action of the Congress was sustained by the Supreme Court. U.S. v. Arizona ___U.S.___(Dec. 21, 1970); Oregon v. Mitchell ___U.S.___(Dec. 21, 1970).

At the local level the New York City Board of Education in 1958 published its comprehensive Puerto Rican Study dealing with the difficulties encountered by these native Spanish-speaking pupils in the New York school system. 234/ The Texas Education Agency in 1965 investigated the problem of the pupils in the Texas schools having Spanish-surnames and Colorado published in 1967 a general study of the status of the Spanish-surnamed population in that state. 235/

As the state studies show, education was in the forefront of the concern of the Spanish-speaking. The 1960 Census statistics on the educational level of the Spanish-surnamed students in the five Southwestern states showed that Mexican-American children had completed an average of 8.12 years as compared to the White American average of more than 14 years of schooling. The high drop-out rate that these statistics evidenced caused great concern.

Moreover, educational theory had changed. Quite apart from the political developments mentioned above, there was an increasing interest in introducing foreign language programs in elementary schools. This activity was assisted by a series of government grants under the National Defense Education Act, passed in 1958 in response to the Russian launching of Sputnik. Title VI and--later--Title XI of

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234/ New York City Board of Education, Puerto Rican Study 1953-1957, (1958).

235/ Colorado Commission on Spanish Citizens, The Status of Spanish-Surnamed Citizens in Colorado (1967).

that Act emphasized the retention and expansion of our foreign language resources. This renewed interest in foreign languages and foreign language teaching enabled new groups such as ACTFL (American Council for the Teaching of Foreign Languages) and TESOL (Teachers of English to Speakers of Other Languages) to assert themselves in educational circles.

The powerful National Education Association (NEA) in late 1966 sponsored a conference on the education of Spanish-speaking children in the schools of the southwest which led to the publication of NEA's report entitled "The Invisible Minority, Pero No Vencibles." This report strongly recommended instruction in Spanish for those children who speak Spanish as a native tongue. In April 1967, at the Texas conference for the Mexican-American at San Antonio, demonstrations were given of the work of bilingual and English as a second language program already established in a few elementary schools in Texas. One of the major conclusions of the conference was the need for bilingual education with a call to the Federal government to assume an important part of this responsibility.

These educational forces also conjoined to discredit the idea that instruction in English and American values and patriotism were inextricably linked although this view continued to be voiced at the hearings on the Bilingual Education Act, even by avowed advocates of the new law.

The climax of these efforts was reached when, in 1967, Senator Ralph Yarborough of Texas introduced a bill 236/ to amend existing elementary and secondary education act legislation to provide assistance to local educational agencies in support of bilingual education programs. Bilingual education was defined as the use of non-English mother tongue as a medium of instruction (together with English) in all or a significant portion of the regular school curriculum. Senator Yarborough's bill was limited to assisting the Spanish-surnamed populace only.

Although the Office of Education was at first reluctant to support new legislation for bilingual education, taking the position that this problem could be handled through existing statutes, especially Titles I and Title II of the Elementary and Secondary Education Act, it finally advocated the bilingual bills. In the House of Representatives at about the same time a number of similar bills advocating bilingual education were introduced, most notably by Congressmen Augustus Hawkins and Edward Roybal of California and Congressman Jerome Scheuer of New York. 237/

236/ S. 428. in Sen. Hearings, Bilingual Education.

237/ Bilingual Education Programs, House of Rep., Hearings before the House General Subcommittee on Education of the Committee on Education and Labor on Bilingual Education Programs 90th Cong., 1st Sess. (1967). (Hereinafter cited as House Hearings, Bilingual Programs.).

The Hawkins/Roybal bill expanded on the Yarborough bill to include assistance to the French-speaking as well, and the Scheuer bill authorized bilingual instruction to all children whose native tongue was not English.

The changed political and moral situation can be seen in the opening speeches of the sponsors of the legislation in the Senate, Senator Yarborough and Senator Paul Fannin. Much of the rhetoric--"disadvantaged" and "discrimination"--arose from the broader aspects of the civil rights movement and the number of people affected was immediately noted.

> Mr. Yarborough. Mr. President, in the southwestern part of the United States--bordered by my State of Texas on the east, California on the west, and reaching to Colorado in the north--there exists, as in the rest of the country, a folklore that we have achieved equality of economic opportunity, that everyone has an equal chance to get ahead.
>
> The reality lurking under this belief is that for a group of 3,465,000 persons, 12 percent of the population of the Southwestern States, equality of economic opportunity awaits the future. It is a myth, and not a reality, today for the Mexican-Americans of the Southwest. . . .
>
> I believe the time has come when we can no longer ignore the fact that 12 percent of the people of the Southwestern United States do not have equal access with the rest of the population to economic advancement. The time has come when we must do something about the poor schooling, low health standards, job discrimination, and the many other artificial barriers that stand in the way of the advancement of the Mexican-American people along the road to economic equality. 238/

238/ Sen. Hearings, Bilingual Education 16-17.

> Mr. Fannin. I need not remind any member of this special subcommittee that to overcome, educationally, the effects of a disadvantaged childhood is a formidable task. But to rise above the combined effects of a disadvantaged youth and a language barrier is for many children an educational impossibility. 239/

But the broader political context is most clearly seen in the way representatives of the Executive Branch stated the goal of education:

> Brief references to two documents, 184 years apart in our history, should suffice on this point. The earlier document, the Bill of Rights of the Constitution, is unequivocally emphatic about the primacy and dignity of the individual as opposed to the power of the state. Justice Brandeis has epitomized this emphasis in the Olmstead Case: 'The makers of the Constitution...sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone, the most comprehensive of rights and the right most valued by civilized men.'
>
> The second document, published in 1960 as Goals for Americans, contains the Report of President Eisenhower's Commission on National Goals together with certain essays on the same subject. Henry Wriston, chairman of the Commission, reminds us that human dignity is the basic value of freedom, that dignity does not consist in being well-housed, well-clothed and well-fed. And he goes on to say 'that it rests exclusively upon the lively faith that individuals are beings of infinite value.'

239/ *Id*. at 14.

> Some educational corollaries emerge from the above statement and restatements of principles:
>
> > 1. If the first goal of education is individual self-fulfillment, all other goals, however important, such as preparation for citizenship, preparation for 'the world of work,' and assimilation to the 'mainstream of American life,' become secondary....
> >
> > 2. The child's parents and the child himself must have the major voice in determining what his education should be.
>
> So we see that the 'right to be let alone' places self-fulfillment, self-determined, at the peak of all the desiderata of education. 240/

Within this broadly stated goal theoretical educational support for the bilingual program was relatively easy to come by. The need to change the existing system was the most frequently heard theme of the testimony. The most important statistics in this regard were the drop-out rate for Mexican-Americans and the failure of many Spanish-speaking children to attend school.

> In education, as measured in median number of years completed by the adult population, the Spanish-American ranks as low as, or below, any other ethnic group identified and tabulated by the Census except the American Indian woman.
>
> Among adults 25 and over, Mexican-Americans in 1960 had an average of 7.1 years of schooling as compared to the 12.1 years for Anglos, and 9 for non-whites. The gap between Anglos and Mexican-Americans is 5 years or 41 percent.
>
> It can be said, however, that things are getting a little better. Some educators have become aware of the harm done to Spanish-speaking

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240/ Statement of D. Bruce Gaarder, Chief, Modern Language Section, U.S. Office of Education in House Hearings, Bilingual Programs 351.

> children by forbidding them the use of Spanish and as a result some schools are experimenting with new and imaginative ways of educating Spanish-speaking children in a predominantly English-speaking society....
>
> Some of this improvement shows up in the statistics for a younger generation of Spanish-speaking students. For the age group 14 to 24, Mexican-Americans have completed 9.2 years of school on the average, compared to 11.3 for Anglos and 10.6 for nonwhites. This is still a very large gap of 2.1 years or 19 percent.
>
> The psychological damage suffered under a discriminatory educational system shows up in test scores. 241/ - - -
>
> In our situation in Texas...we find that the statistics show that 20 percent of[Mexican-Americans] them between the ages of 5 and 15 are not enrolled in school. The general reason for this is that they are in no way able to overcome their linguistic handicap and carry on their regular schoolwork in English--the language of the school and a foreign language to them. 242/

Although a list of schools where bilingual education was in effect was submitted to the Congress during the hearings, the statistical data to measure the educational advantages or disadvantages of these innovations were not available. The question of what beneficial effects instruction in the

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241/ Statement of Hon. Paul J. Fannin, *Sen. Hearings, Bilingual Education* 17.

242/ Statement of Dr. Faye L.Bumpass, *Id*. at 60.

native tongue would have on the dropout rate or other educational desiderata could not be answered.

Some testimony noted that instruction in the native language would result in greater information than instruction in English alone, citing a 1925 Columbia Teachers College study performed in Puerto Rico in very different circumstances as noted earlier in this essay.

> The Columbia University group gave 69,000 and more tests all over the island [Puerto Rico] to make a comparison between what the children learned through English, which was a foreign language to them, and what they learned through Spanish, their native tongue. Using the Stanford achievement tests in English and Spanish versions, it was possible to compare the Puerto Rico children's achievement with that of children in the 48 States. In comparison with children in the continental United States on tests of reading, arithmetic, language, and spelling, very carefully conducted by the best people in the United States to do it, the Puerto Ricans' achievement through English showed them to be markedly retarded. That is what happens in Texas, too, and New Mexico. . . . The Puerto Rican children's achievements through Spanish was, by and large, markedly superior to that of continental U. S. children who were using their own mother tongue, English. They were superior in much the same degree that they were inferior when trying to learn through English. I am speaking about Puerto Rican children, who speak Spanish natively. 243/

243/ Statement of Dr. A. Bruce Gaarder, *Id*. at 49.

On the more difficult question whether instruction in the native tongue eventually made adjustment in English easier only one study was cited:

> I will describe very briefly the work of Dr. N. Modiano working through New York University in Chiapas, Mexico, an area where there are a number of indigenous Mexican languages spoken as opposed to Spanish, the national language of Mexico.
>
> The object of the Modiano research was to determine whether children in Chiapas learned Spanish best, learned to read Spanish more easily and effectively by hammering directly on Spanish exclusively, or whether they would learn Spanish more easily if they approached it through the mother tongue--in this case Tzeltal and Tzotzil, two of the languages of Chiapas. And as you will read here later, the research shows unquestionably that the children who first studied and first learned to read in their mother tongue did far superior work in their reading of Spanish when they were later examined and tested in Spanish. 244/

244/ *Id*. at 48.

Educators who approached the problem as one of retention of our language resources did not have to meet the issue of the effect on general information or to compare bilingual education with teaching in English only. But what they did emphasize was that bilingualism or multi-lingualism meant pluralistic cultural patterns as well:

> All in all, cultural and linguistic diversity must be publicly recognized, publicly discussed, and publicly supported if language maintenance is to be quickly, fully, and effectively reinforced. Appeals on behalf of such diversity can be supported by reference to American values, tradition, and history. As a possibly vital and creative force in American life, cultural diversity has all too long been ignored or given only apologetic and embarrassed glances. If language maintenance is to be seriously pursued in the future, public rehabilitation of this topic will be necessary. Bilingualism does not exist in a vacuum. Nor does it exist in a school. It exists in the context of ethnic, religious, and cultural differences. It cannot be supported on a national scale without supporting biculturism. Biculturism requires awareness of one's heritage, identification with it--at least on a selective basis--and freedom to express this identification in a natural and uninhibited manner. It can only be enriching for our country to discover that the languages which have recently been brought to our attention are inextricably related to diverse behavioral patterns and behavioral products which can be every bit as acceptable and as valuable as the languages themselves. The languages can only function in conjuction with meaningful patrimonies. Intimately meaningful patrimonies can only enrich America and the lives of its citizens. 245/

245/ Statement of Dr. Joshua Fishman, *Id*. at 125. See also Boyer, *Texas Squanders Non-English Resources*, *Id*. at 675.

The voices from the past were also present. Even as they saw the problem and advocated the new laws they reaffirmed the need for English:

> Sen. Fannin...And I am also concerned, in your statement on page 4--I say 'concerned,' but I just want to emphasize it--where you say 'The Schools of El Paso and'--is that Ysleta--
>
> Senator Yarborough. Ysleta.
>
> Senator Fannin (continuing). 'Area have established a language center where pilot programs are being conducted in English as a second language,' do you feel that we should always consider English as the primary language in our instructional programs throughout the Nation?
>
> Mr. Howe. Well, I think that we ought to work toward a position where youngsters have as much capability in English as possibly can be developed. I do think we have to take youngsters where they are. In other words, if a youngster comes to school speaking Spanish, I think we have to speak Spanish to him.
>
> Senator Fannin. Yes. 246/
>
> . . .
>
> Senator Fannin. Of course, all of this teaching is to acquire English as a primary language eventually.
>
> Dr. Bumpass. Yes.
>
> Senator Fannin. And then have the Spanish as a secondary language and certainly as a very valuable asset to the students.
>
> Dr. Bumpass. Yes. 247/
>
> . . .

246/ *Id*. 42-43. See also Cong. de La Garza's comments. *Id*. 28

247/ *Id*. at 64.

> Senator Fannin. Well, I agree with you that a great deal can be done in this regard. Of course, I feel that if we motivate these children--and we must motivate them by letting them have the opportunity to learn the skills that will give them confidence, and that, of course, involves a good utilization of the English language.
>
> Mr. Monserrat. Absolutely.
>
> Senator Fannin. So I am very strong in my opinion that we should not let them lack in their training in this regard. And I am concerned that perhaps when we do attempt to overcome this problem, that we must be very careful or we will create another problem; that they will not see the great need for learning the English language. 248/

Since the passage of the Act to December 1970 134 projects using 16 languages have received funding: thirteen Indian projects; five French; two Chinese; one Japanese; three Portuguese; one Eskimo; one Russian, and the remainder Spanish-speaking. The extent and intensity of use of the native tongue varies considerably from project to project. English is included in some phase of all of them. 249/

We can expect the pressure for bilingual education to continue. The Senate Special Subcommittee on Indian Education, in its report mentioned earlier in this essay, called for instruction in the Indian language, and the appendix to the U. S. Civil Rights Commission draft report entitled *Cultural Exclusion of*

248/ *Id*. at 78-79.

249/ Thirteen additional bilingual education projects have been supported under the Education Profession's Development Act in addition to an unknown number initiated without federal funding. Information provided by Dr. A. Bruce Gaarder, U. S. Office of Education.

Mexican-Americans in the Schools of the Southwest makes a similar recommendation.

The response from the state governments so far has been relatively good. California, on May 24, 1967, passed a law authorizing bilingual instruction "when such instruction is educationally advantageous to the pupils--[if] it does not interfere with the systematic, sequential and regular instruction of all pupils in the English language." 250/ The New Mexico Legislature adopted in 1969 a law permitting any school district to set up "a bilingual and bicultural program of study." 251/

Arizona in 1969 passed legislation to permit school districts where pupils have English-language difficulties to provide special programs of bilingual instruction in the first three grades. In addition to Texas' provision for a special pre-school program for non-English-speaking childre, 252/

250/ Calif. Education Code, Sec. 71. Recently Chinese students sued to require instruction in Chinese in their public schools alleging English language instruction was unconstitutional as violative of the XIV Amendment. The lower court recognized the special need but found no constitutional right. Lau et. al. v. Nichols, Cir. No. C-70 627 LHB (D.C.N.D. Calif., May 26, 1970). The case is on appeal in the United States Court of Appeals for the Ninth Circuit. Lau et. al. v. Nichols (9th Cir., No. 26155).

251/ N. Mex. Stats. Ann. 77-11-12 (1969).

252/ Tex. Rev. Cir. Stat. Ann., Art. 2654-1b (1965).

Texas revised its Education Code in 1969 253/ to permit school districts at their option to offer bilingual education. 254/

253/ Vernon's Anno. Tex. Stats. Education Code, Sec. 4.17 (1969).

254/ It was reported that in October 1970 a Mexican-American teacher in Crystal City, Texas, was indicted for teaching a high school class in Spanish contrary to the Texas Code. U. S. Commission on Civil Rights Draft Report II, Cultural Exclusion of Mexican-Americans in the Schools of the Southwest, Appendix C, A Legal and Historical Backdrop, p.XV (1971).

CONCLUSION

We have tried to show that the utilization of the English language as the language of instruction is the result of a decision reached on extra-educational grounds. Of course, the decision had an educational effect (as in the case of Mexican-Americans and Puerto Ricans) and was frequently designed to do so. But even when it did, it had an overriding political purpose and for that reason was coupled with discriminatory action of various kinds designed to suppress the minority group's normal development. In other cases the educational effect was clearly marginal or nonexistent (German-Americans, Japanese-Americans). What was important was the act of imposition itself which acted as a symbol to demonstrate official public hostility toward the particular group. Again, the educational policy was combined with other acts, both public and private: most notably, in the continental United States, segregation, to achieve the desired political result.

The imposition of the English language and the discriminatory action accompanying it arose quite naturally out of the limited concept of pluralism present in the United States during its expansionist years. Until recently distinctive language and cultural development based upon religious and racial differences were viewed with great hostility, and public actions to inhibit cultural development in other than the preconceived mold were regarded as quite in order. 255/ The native language as a tool to teach English or as an adjunct to the public school system to assist in parental involvement, even given the limited goals envisioned, was rarely considered. There are only limited examples in the literature of discussion of the effect of English language instruction on the learning of neutral subject matter (i.e., math, reading).

255/ It is only fair to the reader to note at this point that Dr. Heinz Kloss, one of the leading scholars in the area of bilingualism, has concluded, quite contrary to the views expressed here, that the United States' legal norms have assisted in the preservation of ethnic identity in the schools and elsewhere:

> But as our study shows, the non-English ethnic groups in the U.S.A. were anglicized not *because* of nationality laws which were *unfavorable* towards their languages but *in spite* of nationality laws *favorable* to them. Not by legal provisions and measures of the authorities, not by the state did the nationalities become assimilated, but by the absorbing power of the unusually highly developed American Society. The nationalities could be given as many opportunities as possible to retain their identity, yet the achievements of the Anglo-American society and the possibilities for individual achievements and advancements which this society offered were so attractive that the descendants of the 'aliens' sooner or later voluntarily integrated themselves into this society.

H.Kloss, *Excerpts from the National Minority Laws of the U. S. of America* in East-West Center Institute of Advanced Projects, Occasional Papers of Research Translations 124 (1966). The complete original work is entitled *Das Nationalitatenrecht der Vereinigten Staaten von Amerika*(1963).

There are two opposing conclusions that can be reached from the failure of educators and educational theories to play a strong role in the English-language decisions we have discussed here. First, and most obvious, is that this is a failing and that it is to be hoped that in the future educators will assume a much stronger role. This would presuppose that, in fact, at various points educational theory would have been enlightening.

It is hard to judge whether this is, in fact, the case. There certainly was a good deal of information available in educational circles and some rather careful studies on the effectiveness of native language use in various situations, and this information was not brought to bear on the subject. 256/ However, even today a review of the literature would indicate serious differences of opinion on this issue. Although some educators have emphasized native tongue instruction almost, it would appear, to the exclusion of English, 257/ the trend is increasingly to look to better ways to teach English. In

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256/ The literature with respect to Indians is reviewed in Berry, op. cit. supra note 173, at 55-60; and L. Coombs, The Educational Disadvantage of the Indian American Student 60-64 (1970). It is discussed with respect to Mexican-Americans in T. Carter, Mexican-Americans in School: A History of Educational Neglect 49-53 (1970).

257/ E.g., N.E.A., supra note 147.

addition there appears to be some unanimity on the importance of stressing the cultural heritage and history of minority groups. However, whether instruction should be in the native language and what the effect of such instruction is on knowledge of basic subjects or English is less clear. 258/ This is partly because control situations (so that isolation of the effect of English language instruction can be demonstrated) are difficult to construct. Instruction in the native tongue may act as a selection mechanism for teachers, perhaps resulting in obtaining teachers who are more sympathetic and concerned. Or it may permit parents to take a more active role with consequent student benefits. 259/ The more studies that have been done the more complex the topic has appeared.

Some educators have noted the progressively larger divergence in achievement that occurs with age between the Indian child and White child who start out at the beginning of school approximately equal in achievement tests.

Some have noted a serious gap at the fifth grade and then at college entrance when language skills are becoming increasingly important. Others see at these junctures periods of conscious awakening of social differences leading to alienation and

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258/ Coombs, after a review of the literature which in general tends to favor bilingualism, is skeptical and notes others who are doubtful. Coombs, op. cit. supra note 256, at 60-64, 119. See also Brewer, op. cit. supra note 173, at 55-60.

259/ Coombs, Id. at 64-76; Brewer, Id. at 36-46.

and withdrawal. 260/ Without belaboring the issue, educators had--and have--strong opinions but can at this point show, at best, that native language instruction is only one of the elements in educational achievement.

But there is another way to look at the facts and interpret the historical aspects which we have related here and that is that the issue is indeed a political one. Whether instruction is in English or the native language makes little or no difference; rather what is important are the opportunities that are thought available to the ethnic group by members of the group themselves.

Educators have provided the most significant evidence to demonstrate this. Increasingly, they have studied the relationship between a pupil's motivation and performance in school to his perception of the society around him and the opportunities he believes that await him there. As evidence of this mounts, the importance of native language instruction as an educational tool linking home and school--but not society and school--diminishes.

> However, the crucial factor is not the relationship between home and school, but between the minority group and the local society. Future reward in the form of acceptable occupational and social status keeps children in school. Thus, factors such as whether a community is socially open or closed, caste-like or not, discriminatory or not, has restricted or nonrestricted roles and statuses for its minority-group segment, become as important as the nature of the

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260/ Brewer, Id. at 18-25.

> curriculum or other factors in the school itself, or perhaps more important. 261/

Similarly, analysis of the causes of Indian failure in schools has increasingly focused on isolation, alienation, limited opportunity in the society at large 262/ and other factors which indicate that broader concerns than teaching method or technique are involved.

Educators who have pressed for TESOL or bilingual education have frequently tended to minimize these factors. Thus, race and color discrimination are rarely mentioned. 263/ and the educational experience of other minorities with other than language problems (the Japanese-Americans and German-Americans mentioned earlier) are not brought to bear. The United States Civil Rights Commission has studied the effects of school segregation on both the Black and Mexican-American

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261/ Carter, op. cit. supra. note 256, at 144.

262/ Brewer, op. cit. supra note 173, at 31.

263/ E.g., N.E.A., supra note 147, overlooks the importance of the color issue. For example, the letter of a thirteen-year-old Mexican-American girl, which opens the report, says "my dark skin always makes me feel that I will fail." Id. at 3. Yet the survey never mentions color at all, but treats the cultural and language difference as if it alone were the problem.

American population 264/and, while analogies may be all too facile, the failure in much of the literature to note any similarities at all is surely a serious error.

Following this line of argument it should be of no surprise, although the literature does not make much of this, that Texas--which in general has been more restrictive with respect to Mexican-Americans and where school segregation of Mexican-Americans is more severe than in either California or New Mexico 265/--has also a worse record in education than these states. 266/

The requirement of instruction in the English language, then, is a symbol of a broader societal discrimination which can usually be found in segregation and in limitations on employment opportunities. Confining ourselves to the English-language-instruction requirement, the issue is not whether the native tongue is used as the language of instruction or not, but only whether English is the required language of

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264/ U. S. Civil Rights Commission, Racial Isolation in the Public Schools (1967) and U. S. Civil Rights Commission, Reports I & II, Mexican-American Education Study (1970-71).

265/ U. S. Comm. on Civil Rights, op. cit. supra note 159, at 22.

266/ Carter, op. cit. supra note 256, at 22-25.

instruction. If English is not required or not imposed it becomes one more symbol of tolerance and openness, one more way in which society is stating that the natural development of the minority group involved is acceptable and appropriate and should be permitted. What language is to be chosen should be decided by the local community. The results will likely not make much difference as long as it accurately reflects the instincts and desires of the parents so that they feel that the opportunity for their child is maximized.

The United States, at both the Federal and state level, as we have seen, in balancing the unifying effect of English with the harmonizing benefits of native language retention has consistenly favored English. Even where the group was relatively small and the accommodation to be made was relatively short-term in character (one or two generations at most), the force of official sanction was used to impose English-language instruction and to limit native-language instruction. Whatever the benefits of such a policy were its necessarily concomitant discriminations have left a bitter legacy. At this time the government has realized and should continue to do so that the option of native language instruction should also be made available to be exercised as desired by local communities. The Federal system needs the sense of harmony, cultural equality, and devotion which such an option engenders.

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